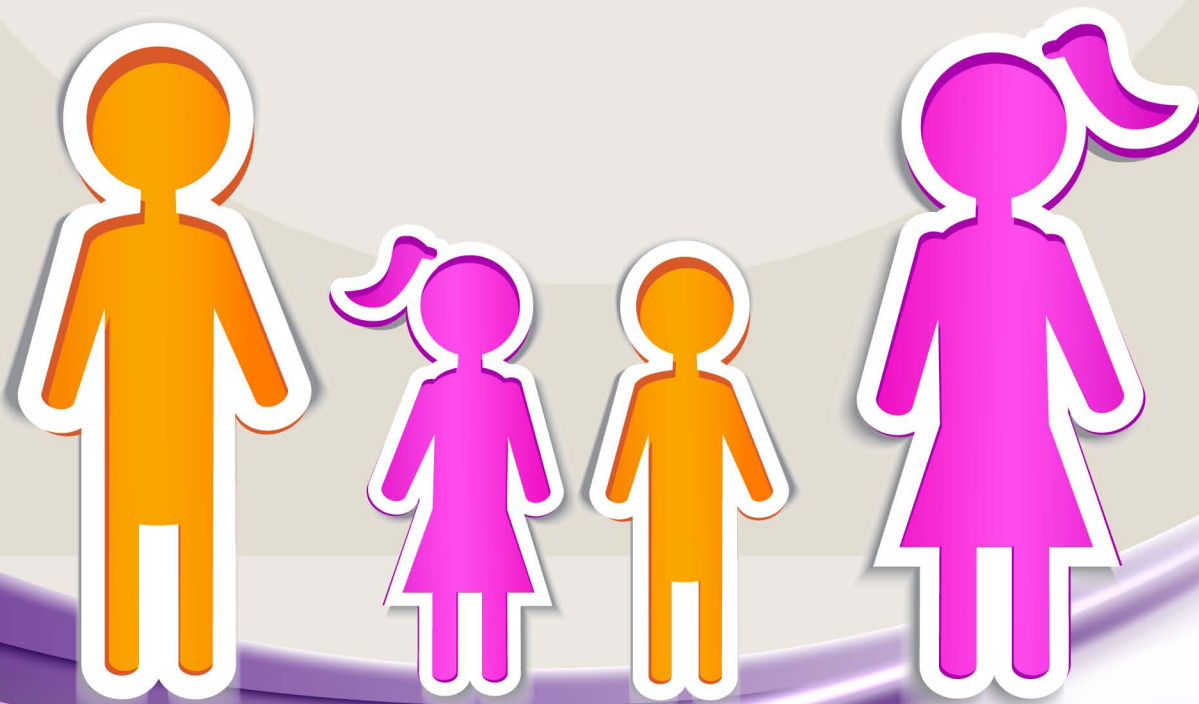


Laws, Rules and Issuances for Cases Involving Family, Domestic Relations, Women and Children



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REPUBLIC ACT No. 4200
AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY
OF COMMUNICATION, AND FOR OTHER PURPOSES
Approved on June 19, 1965

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

SECTION 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or walkie-talkie or tape recorder, or however otherwise described.

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: *Provided*, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.

SEC. 2. Any person who willfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings.

SEC. 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: *Provided*, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing:

- (1) That there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: *Provided, however*, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed;
- (2) That there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and
- (3) That there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify:

- (1) The identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location;

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- (2) The identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words;
- (3) The offense or offenses committed or sought to be prevented; and
- (4) The period of the authorization. The authorization shall be effective for the period specified in the order which shall not exceed 60 days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

The court referred to in this section shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed.

SEC. 4. Any communication or spoken word, or the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or any information therein contained obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

SEC. 5. All laws inconsistent with the provisions of this Act are hereby repealed or accordingly amended.

SEC. 6. This Act shall take effect upon its approval.

PRESIDENTIAL DECREE No. 603
THE CHILD AND YOUTH WELFARE CODE
Approved on December 10, 1974

I, Ferdinand E. Marcos, , President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

TITLE I

GENERAL PRINCIPLES

ARTICLE 1. Declaration of Policy. – The Child is one of the most important assets of the nation. Every effort should be exerted to promote his welfare and enhance his opportunities for a useful and happy life.

The child is not a mere creature of the State. Hence, his individual traits and aptitudes should be cultivated to the utmost insofar as they do not conflict with the general welfare.

The molding of the character of the child starts at the home. Consequently, every member of the family should strive to make the home a wholesome and harmonious place as its atmosphere and conditions will greatly influence the child's development.

Attachment to the home and strong family ties should be encouraged but not to the extent of making the home isolated and exclusive and unconcerned with the interests of the community and the country.

The natural right and duty of parents in the rearing of the child for civic efficiency should receive the aid and support of the government.

Other institutions, like the school, the church, the guild, and the community in general, should assist the home and the State in the endeavor to prepare the child for the responsibilities of adulthood.

ART. 2. Title and Scope of Code. – The Code shall be known as the Child and Youth Welfare Code. It shall apply to persons below 21 years of age except those emancipated in accordance with law. "Child" or "minor" or "youth" as used in this Code, shall refer to such persons.

ART. 3. Rights of the Child. – All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

- (1) Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.
- (2) Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security.

The dependent or abandoned child shall be provided with the nearest substitute for a home.

- (3) Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.

The gifted child shall be given opportunity and encouragement to develop his special talents.

The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment, education and care required by his particular condition.

- (4) Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.
- (5) Every child has the right to be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of his character.

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- (6) Every child has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.
- (7) Every child has the right to full opportunities for safe and wholesome recreation and activities, individual as well as social, for the wholesome use of his leisure hours.
- (8) Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.
- (9) Every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes.
- (10) Every child has the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or unable to provide him with his fundamental needs for growth, development, and improvement.
- (11) Every child has the right to an efficient and honest government that will deepen his faith in democracy and inspire him with the morality of the constituted authorities both in their public and private lives.
- (12) Every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

ART. 4. Responsibilities of the Child. – Every child, regardless of the circumstances of his birth, sex, religion, social status, political antecedents and other factors shall:

- (1) Strive to lead an upright and virtuous life in accordance with the tenets of his religion, the teachings of his elders and mentors, and the biddings of a clean conscience;
- (2) Love, respect and obey his parents, and cooperate with them in the strengthening of the family;
- (3) Extend to his brothers and sisters his love, thoughtfulness, and helpfulness, and endeavor with them to keep the family harmonious and united;
- (4) Exert his utmost to develop his potentialities for service, particularly by undergoing a formal education suited to his abilities, in order that he may become an asset to himself and to society;
- (5) Respect not only his elders but also the customs and traditions of our people, the memory of our heroes, the duly constituted authorities, the laws of our country, and the principles and institutions of democracy;
- (6) Participate actively in civic affairs and in the promotion of the general welfare, always bearing in mind that it is the youth who will eventually be called upon to discharge the responsibility of leadership in shaping the nation's future; and
- (7) Help in the observance of individual human rights, the strengthening of freedom everywhere, the fostering of cooperation among nations in the pursuit of their common aspirations for programs and prosperity, and the furtherance of world peace.

ART. 5. Commencement of Civil Personality. – The civil personality of the child shall commence from the time of his conception, for all purposes favorable to him, subject to the requirements of Article 41 of the Civil Code.

ART. 6. Abortion. – The abortion of a conceived child, whether such act be intentional or not, shall be governed by the pertinent provisions of the Revised Penal Code.

ART. 7. Non-disclosure of Birth Records. – The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

- (1) The person himself, or any person authorized by him;

- (2) His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in-charge of him if he is a minor;
- (3) The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and
- (4) In case of the person's death, the nearest of kin.

Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding Five Hundred Pesos (P500), or both, in the discretion of the court.

ART. 8. *Child's Welfare Paramount.* – In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.

ART. 9. *Levels of Growth.* – The child shall be given adequate care, assistance and guidance through his various levels of growth, from infancy to early and later childhood, to puberty and adolescence, and when necessary even after he shall have attained age 21.

ART. 10. *Phases of Development.* – The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to ensure and enable his fullest development physically, mentally, emotionally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity appropriate to the corresponding developmental stage.

ART. 11. *Promotion of Health.* – The promotion of the child's health shall begin with adequate pre-natal and post-natal care both for him and his mother. All appropriate measures shall be taken to insure his normal total development.

It shall be the responsibility of the health, welfare, and educational entities to assist the parents in looking after the health of the child.

ART. 12. *Education.* – The schools and other entities engaged in non-formal education shall assist the parents in providing the best education for the child.

ART. 13. *Social and Emotional Growth.* – Steps shall be taken to insure the child's healthy social and emotional growth. These shall be undertaken by the home in collaboration with the schools and other agencies engaged in the promotion of child welfare.

ART. 14. *Morality.* – High moral principles should be instilled in the child, particularly in the home, the school, and the church to which he belongs.

ART. 15. *Spiritual Values.* – The promotion of the child's spiritual well-being according to the precepts of his religion should, as much as possible, be encouraged by the State.

ART. 16. *Civic Conscience.* – The civic conscience of the child shall not be overlooked. He shall be brought up in an atmosphere of universal understanding, tolerance, friendship, and helpfulness and full consciousness of his responsibilities as a member of society.

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TITLE II

CHILD AND YOUTH WELFARE AND THE HOME

CHAPTER I

PARENTAL AUTHORITY

SECTION A. In General.

ARTICLES 17-19. Repealed by Article 254, Executive Order No. 209, The Family Code.

ART. 20. *Guardian.* – The court may, upon the death of the parents and in the cases mentioned in Articles 328 to 332 of the Civil Code, appoint a guardian for the person and property of the child, on petition of any relative or friend of the family or the Department of Social Welfare and Development.

ART. 21. *Dependent, Abandoned or Neglected Child.* – The dependent, abandoned or neglected child shall be under the parental authority of a suitable or accredited person or institution that is caring for him as provided for under the four preceding articles, after the child has been declared abandoned by either the court or the Department of Social Welfare and Development.

ART. 22. *Transfer to the Department of Social Welfare and Development.* – The dependent, abandoned or neglected child may be transferred to the care of the Department of Social Welfare and Development or a duly licensed child-caring institution or individual in accordance with Articles 142 and 154 of this Code, or upon the request of the person or institution exercising parental authority over him.

From the time of such transfer, the Department of Social Welfare and Development or the duly licensed child-caring institution or individual shall be considered the guardian of the child for all intents and purposes.

ART. 23. *Case Study.* – It shall be the duty of the Department of Social Welfare and Development to make a case study of every child who is the subject of guardianship or custody proceedings and to submit its report and recommendations on the matter to the court for its guidance.

ART. 24. *Intervention of Department of Social Welfare and Development.* – The Department of Social Welfare and Development shall intervene on behalf of the child if it finds, after its case study, that the petition for guardianship or custody should be denied.

ART. 25. *Hearings Confidential.* – The hearing on guardianship and custody proceedings may, at the discretion of the court, be closed to the public and the records thereof shall not be released without its approval.

ART. 26. *Repealing Clause.* – All provisions of the Civil Code on parental authority which are not inconsistent with the provisions of this Chapter shall remain in force: *Provided*, That Articles 334 up to 348 inclusive on Adoption, are hereby expressly repealed and replaced by Section B of this Chapter.

SEC. B. Adoption.

ARTICLES 27-31. Repealed by Article 254, Executive Order No. 209, The Family Code.

ART. 32. *Hurried Decisions.* – In all proceedings for adoption, steps should be taken by the court to prevent the natural parents from making hurried decisions caused by strain or anxiety to give up the child, and to ascertain, that all measures to strengthen the family have been exhausted and that any prolonged stay of the child in his own home will be inimical to his welfare and interest.

ART. 33. *Case Study.* – No petition for adoption shall be granted unless the Department of Social Welfare and Development, has made a case study of the child to be adopted, his natural parents as well as the prospective

adopting parents, and has submitted its report and recommendations on the matter to the court hearing such petition. The Department of Social Welfare shall intervene on behalf of the child if it finds, after such case study, that the petition should be denied. *(As amended by Executive Order No. 91, December 17, 1986.)*

ART. 34. Procedure. – The proceedings for adoption shall be governed by the Rules of Court insofar as they are not in conflict with this Chapter.

ART. 35. Trial Custody. – No petition for adoption shall be finally granted unless and until the adopting parents are given by the court a supervised trial custody period of at least six months to assess their adjustment and emotional readiness for the legal union. During the period of trial custody, parental authority shall be vested in the adopting parents.

The court may, upon its own motion or on motion of the petitioner, reduce or dispense with the trial custody period if it finds that it is to the best interest of the child. In such case, the court shall state its reasons for reducing or dispensing with the said period.

An alien not permanently residing in the Philippines adopting a Filipino child shall complete the supervised trial custody period to ensure the child's adjustment to a new family life and culture, save in those cases provided for in Article 27 hereof. *(As amended by Executive Order No. 91, December 17, 1986.)*

ART. 36. Decree of Adoption. – If, after considering the report of the Department of Social Welfare and Development or duly licensed child placement agency and the evidence submitted before it, the court is satisfied that the petitioner is qualified to maintain, care for, and educate the child, that the trial custody period has been completed, and that the best interests of the child will be promoted by the adoption, a decree of adoption shall be entered, which shall be effective as of the date the original petition was filed. The decree shall state the name by which the child is thenceforth to be known.

ART. 37. Civil Registry Record. – The adoption shall be recorded in the local civil register and shall be annotated on the record of birth, and the same shall entitle the adopted person to the issuance of an amended certificate of birth.

ART. 38. Confidential Nature of Proceedings and Records. – All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books and papers relating to the adoption cases in the files of the court, of the Department of Social Welfare and Development, and of any other agency or institution participating in the adoption proceedings, shall be kept strictly confidential.

Subject to the provisions of Article 7, in any case in which information from such records, books and papers is needed, the person or agency requesting the release of the information may file a petition to the court which entered the decree of adoption for its release. If the court finds that the disclosure of the information is necessary for purposes connected with or arising out of the adoption and will be for the best interests of the child, the court may permit the necessary information to be released, restricting the purposes for which it may be used.

ARTS. 39-42. Repealed by Article 254, Executive Order No. 209, The Family Code.

CHAPTER II

RIGHTS OF PARENTS

ARTICLE 43. Primary Right of Parents. – The parents shall have the right to the company of their children and, in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing.

ART. 44. Rights Under the Civil Code. – Parents shall continue to exercise the rights mentioned in Articles 316 to 326 of the Civil Code over the person and property of the child.

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ART. 45. *Right to Discipline Child.* – Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.

CHAPTER III

DUTIES OF PARENTS

ARTICLE 46. *General Duties.* – Parents shall have the following general duties toward their children:

- (1) To give him affection, companionship and understanding;
- (2) To extend to him the benefits of moral guidance, self-discipline and religious instruction;
- (3) To supervise his activities, including his recreation;
- (4) To inculcate in him the value of industry, thrift and self-reliance;
- (5) To stimulate his interest in civic affairs, teach him the duties of citizenship, and develop his commitment to his country;
- (6) To advise him properly on any matter affecting his development and well-being;
- (7) To always set a good example;
- (8) To provide him with adequate support, as defined in Article 290 of the Civil Code; and
- (9) To administer his property, if any, according to his best interests, subject to the provisions of Article 320 of the Civil Code.

ART. 47. *Family Affairs.* – Whenever proper, parents shall allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him.

In cases involving his discipline, the child shall be given a chance to present his side.

ART. 48. *Winning Child's Confidence.* – Parents shall endeavor to win the child's confidence and to encourage him to conduct with them on his activities and problems.

ART. 49. *Child Living Away from Home.* – If by reason of his studies or for other causes, a child does not live with his parents, the latter shall communicate with him regularly and visit him as often as possible.

The parents shall see to it that the child lives in a safe and wholesome place and under responsible adult care and supervision.

ART. 50. *Special Talents.* – Parents shall endeavor to discover the child's talents or aptitudes, if any, and to encourage and develop them.

If the child is especially gifted, his parents shall report this fact to the National Center for Gifted Children or to other agencies concerned so that official assistance or recognition may be extended to him.

ART. 51. *Reading Habit.* – The reading habit should be cultivated in the home. Parents shall, whenever possible, provide the child with good and wholesome reading material, taking into consideration his age and emotional development. They shall guard against the introduction in the home of pornographic and other unwholesome publications.

ART. 52. *Association with Other Children.* – Parents shall encourage the child to associate with other children of his own age with whom he can develop common interests of useful and salutary nature. It shall be their duty to know the child's friends and their activities and to prevent him from falling into bad company. The child should not be allowed to stay out late at night to the detriment of his health, studies or morals.

ART. 53. *Community Activities.* – Parents shall give the child every opportunity to form or join social, cultural, educational, recreational, civic or religious organizations or movements and other useful community activities.

ART. 54. *Social Gatherings.* – When a party or gathering is held, the parents or a responsible person should be present to supervise the same.

ART. 55. *Vices.* – Parents shall take special care to prevent the child from becoming addicted to intoxicating drinks, narcotic drugs, smoking, gambling, and other vices or harmful practices.

ART. 56. *Choice of career.* – The child shall have the right to choose his own career. Parents may advise him on this matter but should not impose on him their own choice.

ART. 57. *Marriage.* – Subject to the provisions of the Civil Code, the child shall have the prerogative of choosing his future spouse. Parents should not force or unduly influence him to marry a person he has not freely chosen.

CHAPTER IV

LIABILITIES OF PARENTS

ARTICLE 58. *Torts.* – Parents and guardians are responsible for the damage caused by the child under their parental authority in accordance with the Civil Code.

ART. 59. *Crimes.* – Criminal liability shall attach to any parent who:

- (1) Conceals or abandons the child with intent to make such child lose his civil status.
- (2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.
- (3) Sells or abandons the child to another person for valuable consideration.
- (4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.
- (5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.
- (6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

- (7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.
- (8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignations and other excessive chastisement that embarrass or humiliate him.
- (9) Causes or encourages the child to lead an immoral or dissolute life.
- (10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.
- (11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

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ART. 60. *Penalty.* – The act mentioned in the preceding article shall be punishable with imprisonment from two to six months or a fine not exceeding Five Hundred Pesos (P500), or both, at the discretion of the Court, unless a higher penalty is provided for in the Revised Penal Code or special laws, without prejudice to actions for the involuntary commitment of the child under Title VIII of this Code.

CHAPTER V

ASSISTANCE TO PARENTS

ARTICLE 61. *Admonition to Parents.* – Whenever a parent or guardian is found to have been unreasonably neglectful in the performance of his duties toward the child, he shall be admonished by the Department of Social Welfare and Development or by the local Council for the Protection of Children referred to in Article 87.

Whenever a child is found delinquent by any court, the father, mother or guardian may be judicially admonished.

ART. 62. *Medical and Dental Services.* – If the child has special health problems, his parents shall be entitled to such assistance from the government as may be necessary for his care and treatment in addition to other benefits provided for under existing law.

ART. 63. *Financial Aid and Social Services to Needy Families.* – Special financial or material aid and social services shall be given to any needy family, to help maintain the child or children in the home and prevent their placement elsewhere.

The amount of such aid shall be determined by the Department of Social Welfare and Development, taking into consideration, among other things, the self-employment of any of the family members and shall be paid from any funds available for the purpose.

ART. 64. *Assistance to Widowed or Abandoned Parent and Her Minor Dependents.* – The State shall give assistance to widowed or abandoned parent or where either spouse is on prolonged absence due to illness, imprisonment, etc. and who is unable to support his/her children. Financial and other essential social services shall be given by the National Government or other duly licensed agencies with similar functions to help such parent acquire the necessary knowledge or skill needed for the proper care and maintenance of the family.

ART. 65. *Criterion for Aid.* – The criteria to determine eligibility for the aid mentioned in the next two preceding articles shall be (1) the age of the child or children, (2) the financial condition of the family, (3) the degree of deprivation of parental care and support, and (4) the inability to exercise parental authority.

ART. 66. *Assistance to Unmarried Mothers and Their Children.* – Any unmarried mother may, before and after the birth of the child, seek the assistance and advice of the Department of Social Welfare and Development or any duly licensed child placement agency. The said agencies shall offer specialized professional services which include confidential help and protection to such mother and her child, including placement of the child for adoption whenever warranted and enforcement of such mother's rights, if any, against the father of such child.

CHAPTER VI

FOSTER CARE

ARTICLE 67. *Foster Homes.* – Foster Homes shall be chosen and supervised by the Department of Social Welfare and Development or any duly licensed child placement agency when and as the need therefore arises. They shall be run by married couples, to be licensed only after thorough investigation of their character, background, motivation and competence to act as foster parents.

ART. 68. Institutional Care. – Assignment of the child to a foster home shall be preferred to institutional care. Unless absolutely necessary, no child below nine years of age shall be placed in an institution. An older child may be taken into an institution for child care if a thorough social case study indicates that he will derive more benefit therefrom.

ART. 69. Day-care Service and Other Substitute Parental Arrangement. – Day-care and other substitute parental arrangement shall be provided a child whose parents and relatives are not able to care for him during the day. Such arrangements shall be the subject of accreditation and licensing by the Department of Social Welfare and Development.

ART. 70. Treatment of Child under Foster Care. – A child under foster care shall be given, as much as possible, the affection and understanding that his own parents, if alive or present, would or should have extended to him. Foster care shall take into consideration the temporary nature of the placement and shall not alienate the child from his parents.

TITLE III

CHILD AND YOUTH WELFARE AND EDUCATION

CHAPTER I

ACCESS TO EDUCATIONAL OPPORTUNITIES

ARTICLE 71. Admission to Schools. – The State shall see to it that no child is refused admission in public schools. All parents are required to enroll their children in schools to complete, at least, an elementary education.

ART. 72. Assistance. – To implement effectively the compulsory education policy, all necessary assistance possible shall be given to parents, specially indigent ones or those who need the services of children at home, to enable the children to acquire at least an elementary education. Such assistance may be in the form of special school programs which may not require continuous attendance in school, or aid in the form of necessary school supplies, school lunch, or whatever constitutes a bar to a child's attendance in school or access to elementary education.

ART. 73. Nursery School. – To further help promote the welfare of children of working mothers and indigent parents, and in keeping with the Constitutional provision on the maintenance of an adequate system of public education, public nursery and kindergarten schools shall be maintained, whenever possible. The operation and maintenance of such schools shall be the responsibility of local governments. Aid from local school board funds, when available, may be provided.

ART. 74. Special Classes. – Where needs warrant, there shall be at least special classes in every province, and, if possible, special schools for the physically handicapped, the mentally retarded, the emotionally disturbed, and the specially gifted. The private sector shall be given all the necessary inducement and encouragement to establish such classes or schools.

ART. 75. School Plants and Facilities. – Local school officials and local government officials shall see to it that school children and students are provided with adequate schoolrooms and facilities including playground, space, and facilities for sports and physical development activities. Such officials should see to it that the school environment is free from hazards to the health and safety of the students and that there are adequate safety measures for any emergencies such as accessible exits, firefighting equipment, and the like. All children shall have the free access to adequate dental and medical services.

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CHAPTER II

THE HOME AND THE SCHOOL

ARTICLE 76. *Role of the Home.* – The home shall fully support the school in the implementation of the total school program – curricular and co-curricular – toward the proper physical, social, intellectual and moral development of the child.

ART. 77. *Parent-Teacher Associations.* – Every elementary and secondary school shall organize a parent-teacher association for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher Association all over the country shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare.

CHAPTER III

MISCELLANEOUS

ARTICLE 78. *Contributions.* – No school shall receive or collect from students, directly or indirectly, contributions of any kind or form, or for any purpose except those expressly provided by law, and on occasions of national or local disasters in which case the school may accept voluntary contribution or aid from students for distribution to victims of such disasters or calamities.

TITLE IV

CHILD AND YOUTH WELFARE AND THE CHURCH

ARTICLE 79. *Rights of the Church.* – The State shall respect the rights of the Church in matters affecting the religious and moral upbringing of the child.

Art. 80. *Establishment of Schools.* – All churches and religious orders, congregations or groups may, conformably to law, establish schools for the purpose of educating children in accordance with the tenets of their religion.

ART. 81. *Religious Instruction.* – The religious education of children in all public and private schools is a legitimate concern of the Church to which the students belong. All churches may offer religious instruction in public and private elementary and secondary schools, subject to the requirements of the Constitution and existing laws.

ART. 82. *Assistance to Churches.* – Insofar as may be allowed by the Constitution, the government shall extend to all churches, without discrimination or preference, every opportunity to exercise their influence and disseminate their teachings.

ART. 83. *Parents.* – Parents shall admonish their children to heed the teachings of their Church and to perform their religious duties. Whenever possible, parents shall accompany their children to the regular devotion of their Church and other religious ceremonies.

TITLE V

CHILD AND YOUTH WELFARE AND THE COMMUNITY

CHAPTER I

DUTIES IN GENERAL OF THE COMMUNITY

ARTICLE 84. *Community Defined.* – As used in this Title, a community shall mean, the local government, together with the society of individuals or institutions, both public and private, in which a child lives.

ART. 85. *Duties of the Community.* – To insure the full enjoyment of the right of every child to live in a society that offers or guarantee him safety, health, good moral environment and facilities for his wholesome growth and development, it shall be the duty of the community to:

- (1) Bring about a healthy environment necessary to the normal growth of children and the enhancement of their physical, mental and spiritual well-being;
- (2) Help institutions of learning, whether public or private, achieve the fundamental objectives of education;
- (3) Organize or encourage movements and activities, for the furtherance of the interests of children and youth;
- (4) Promote the establishment and maintenance of adequately equipped playgrounds, parks, and other recreational facilities;
- (5) Support parent education programs by encouraging its members to attend and actively participate therein;
- (6) Assist the State in combating and curtailing juvenile delinquency and in rehabilitating wayward children;
- (7) Aid in carrying out special projects for the betterment of children in the remote areas or belonging to cultural minorities or those who are out of school; and
- (8) Cooperate with private and public child welfare agencies in providing care, training and protection to destitute, abandoned, neglected, abused, handicapped and disturbed children.

CHAPTER II

COMMUNITY BODIES DEALING WITH CHILD WELFARE

SECTION A. Barangay Councils.

ARTICLE 86. *Ordinances and Resolutions.* – *Barangay* Councils shall have the authority to enact ordinances and resolutions not inconsistent with law or municipal ordinances, as may be necessary to provide for the proper development and welfare of the children in the community, in consultation with representatives of national agencies concerned with child and youth welfare.

ART. 87. *Council for the Protection of Children.* – Every *barangay* council shall encourage the organization of a local Council for the Protection of Children and shall coordinate with the Council for the Welfare of Children and Youth in drawing and implementing plans for the promotion of child and youth welfare. Membership shall be taken from responsible members of the community including a representative of the youth, as well as representatives of government and private agencies concerned with the welfare of children and youth whose area of assignment includes the particular *barangay* and shall be on a purely voluntary basis.

Said Council shall:

- (1) Foster the education of every child in the *barangay*;
- (2) Encourage the proper performance of the duties of parents, and provide learning opportunities on the adequate rearing of children and on positive parent-child relationship;

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- (3) Protect and assist abandoned or maltreated children and dependents;
- (4) Take steps to prevent juvenile delinquency and assist parents of children with behavioral problems so that they can get expert advise;
- (5) Adopt measures for the health of children;
- (6) Promote the opening and maintenance of playgrounds and day-care centers and other services that are necessary for child and youth welfare;
- (7) Coordinate the activities of organizations devoted to the welfare of children and secure their cooperation;
- (8) Promote wholesome entertainment in the community, especially in movie houses; and
- (9) Assist parents, whenever necessary in securing expert guidance counseling from the proper governmental or private welfare agency.

In addition, it shall hold classes and seminars on the proper rearing of the children. It shall distribute to parents available literature and other information on child guidance. The Council shall assist parents, with behavioral problems whenever necessary, in securing expert guidance counseling from the proper governmental or private welfare agency.

ART. 88. *Barangay Scholarships.* – *Barangay* funds may be appropriated to provide annual scholarship for indigent children who, in the judgment of the Council for the Protection of Children, deserve public assistance in the development of their potentialities.

ART. 89. *Youth Associations in Barangays.* – *Barangay* councils shall encourage membership in civil youth associations and help these organizations attain their objectives.

ART. 90. *Aid to Youth Associations.* – In proper cases, *barangay* funds may be used for the payment of the cost of the uniforms and equipment required by these organizations.

SEC. B. Civic Associations of Adults.

ARTICLE 91. *Civic Associations of Adults.* – As used in this Title, a civic association shall refer to any club, organization or association of individuals 21 years of age or over, which is directly or indirectly involved in carrying out child welfare programs and activities.

ART. 92. *Accounting of Proceeds or Funds.* – It shall be the duty of any civic association of adults holding benefits or soliciting contributions pursuant to the provisions of the next preceding article, to render an accounting of the proceeds thereof to the Department of Social Welfare and Development or to the city or municipal treasurer, as the case may be.

ART. 93. *Functions.* – Civic associations and youth associations shall make arrangements with the appropriate governmental or civic organizations for the instruction of youth in useful trades or crafts to enable them to earn a living.

ART. 94. *Youth Demonstrations.* – Any demonstrations sponsored by any civic associations and youth associations shall be conducted in a peaceful and lawful manner.

ART. 95. *Unwholesome Entertainment and Advertisements.* – It shall be the duty of all civic associations and youth associations to bring to the attention of the proper authorities the exhibition of indecent shows and the publication, sale or circulation of pornographic materials.

The Board of Censors or the Radio Control Board may, upon representation of any civic association, prohibit any movie, television or radio program offensive to the proprieties of language and behavior.

Commercial advertisements and trailers which are improper for children under 18 years of age due to their advocating or unduly suggesting violence, vices, crimes and immorality, shall not be shown in any movie theater where the main feature is for general patronage nor shall they be used or shown during or immediately before and after any television or radio program for children.

ART. 96. *Complaint Against Child Welfare Agency.* – Any civic association and any youth association may complain to the officials of any public or private child-caring agency about any act or omission therein prejudicial to the wards of such agency.

If the complaint is not acted upon, it may be brought to the Council for the Protection of Children or the Department of Social Welfare and Development, which shall promptly investigate the matter and take such steps as may be necessary.

ART. 97. *Studies and Researches.* – The government shall make available such data and technical assistance as may be needed by civic associations conducting studies and researches on matters relating to child welfare, including the prevention of juvenile delinquency.

ART. 98. *Exchange Programs.* – Student exchange programs sponsored by civic associations or youth associations shall receive the support and encouragement of the State.

SEC. C. Youth Associations.

ARTICLE 99. *Youth Associations.* – As used in this Title, a youth association shall refer to any club, organization or association of individuals below 21 years of age which is directly or indirectly involved in carrying out child or youth welfare programs and activities.

ART. 100. *Rights and Responsibilities.* – All youth associations shall enjoy the same rights and discharge the same responsibilities as civic associations as may be permitted under existing laws.

ART. 101. *Student Organizations.* – All student organizations in public or private schools shall include in their objectives the cultivation of harmonious relations among their members and with the various segments of the community.

CHAPTER III

COLLABORATION BETWEEN THE HOME AND THE COMMUNITY

ARTICLE 102. *Proper Atmosphere for Children.* – The home shall aid the community in maintaining an atmosphere conducive to the proper upbringing of children, particularly with respect to their preparation for adult life and the conscientious discharge of their civic duties as a whole.

ART. 103. *Unwholesome Influence.* – The home and the community shall cooperate with each other in counteracting and eliminating such influences as may be exerted upon children by useless and harmful amusements and activities, obscene exhibitions and programs, and establishments inimical to health and morals.

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TITLE VI

CHILD AND YOUTH WELFARE AND THE SAMAHAN

CHAPTER I

DUTIES IN GENERAL OF THE SAMAHAN

ARTICLE 104. "Samahan" Defined. – As used in this Code, the term "*samahan*" shall refer to the aggregate of persons working in commercial, industrial, and agricultural establishments or enterprises, whether belonging to labor or management.

ART. 105. Organization. – The *barangay*, municipal and city councils, whenever necessary, shall provide by ordinance for the formation and organization of a *samahan* in their respective communities. Membership in the *samahan* shall be on voluntary basis from among responsible persons from the various sectors of the community mentioned in the preceding article.

ART. 106. Duties of the Samahan. – The *Samahan* shall:

- (1) Prevent the employment of children in any kind of occupation or calling which is harmful to their normal growth and development;
- (2) Forestall their exploitation by insuring that their rates of pay, hours of work and other conditions of employment are in accordance not only with law but also with equity;
- (3) Give adequate protection from all hazards to their safety, health, and morals, and secure to them their basic right to an education;
- (4) Help out-of-school youth to learn and earn at the same time by helping them look for opportunities to engage in economic self-sufficient projects;
- (5) To coordinate with vocational and handicraft classes in all schools and agencies in the *barangay*, municipality or city to arrange for possible marketing of the products or articles made by the students; and
- (6) Provide work experience, training and employment in those areas where the restoration and conservation of our natural resources is deemed necessary.

CHAPTER II

WORKING CHILDREN

ARTICLE 107. Employment of Children Below 16 Years. – Children below 16 years of age may be employed to perform light work which is not harmful to their safety, health or normal development and which is not prejudicial to their studies.

The provisions of the Labor Code relating to employable age and conditions of employment of children are hereby adopted as part of this Code insofar as not inconsistent herewith.

ART. 108. Duty of Employer to Submit Report. – The employer shall submit to the Department of Labor a report of all children employed by him. A separate report shall be made of all such children who are found to be handicapped after medical examination. The Secretary of Labor shall refer such handicapped children to the proper government or private agencies for vocational guidance, physical and vocational rehabilitation, and placement in employment.

ART. 109. Register of Children. – Every employer in any commercial, industrial or agricultural establishment or enterprise shall keep:

- (1) A register of all children employed by him, indicating the dates of their birth;

- (2) A separate file for the written consent to their employment given by their parents or guardians;
- (3) A separate file for their educational and medical certificates; and
- (4) A separate file for special work permits issued by the Secretary of Labor in accordance with existing laws.

ART. 110. *Education of Children Employed as Domestic.* – If a domestic is under 16 years of age, the head of the family shall give him an opportunity to complete at least elementary education as required under Article 71. The cost of such education shall be a part of the domestic’s compensation unless there is a stipulation to the contrary.

CHAPTER III

LABOR-MANAGEMENT PROJECTS

ARTICLE 111. *Right to Self-Organization.* – Working children shall have the same freedom as adults to join the collective bargaining union of their own choosing in accordance with existing law.

Neither management nor any collective bargaining union shall threaten or coerce working children to join, continue or withdraw as members of such union.

ART. 112. *Conditions of Employment.* – There shall be close collaboration between labor and management in the observance of the conditions of employment required by law for working children.

ART. 113. *Educational Assistance Programs.* – The management may allow time off without loss or reduction of wages for working children with special talents to enable them to pursue formal studies in technical schools on scholarships financed by management or by the collective bargaining union or unions.

ART. 114. *Welfare Programs.* – Labor and management shall, in cooperation with the Women and Minors Bureau of the Department of Labor, undertake projects and in-service training programs for working children which shall improve their conditions of employment, improve their capabilities and physical fitness, increase their efficiency, secure opportunities for their promotion, prepare them for more responsible positions, and provide for their social, educational and cultural advancement.

ART. 115. *Research Projects.* – Labor and management shall cooperate with any government or private research project on matters affecting the welfare of working children.

CHAPTER IV

COLLABORATION BETWEEN THE HOME AND THE SAMAHAN

ARTICLE 116. *Collaboration Between the Home and the Samahan.* – The home shall assist the *Samahan* in the promotion of the welfare of working children and for this purpose shall:

- (1) Instill in the hearts and minds of working children the value of dignity of labor;
- (2) Stress the importance of the virtues of honesty; diligence and perseverance in the discharge of their duties;
- (3) Counsel them on the provident use of the fruits of their labor for the enrichment of their lives and the improvement of their economic security; and
- (4) Protect their general well-being against exploitation by management or unions as well as against conditions of their work prejudicial to their health, education, or morals.

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TITLE VII

CHILD AND YOUTH WELFARE AND THE STATE

CHAPTER I

REGULATION OF CHILD AND YOUTH WELFARE SERVICES

ARTICLE 117. Classifications of Child and Youth Welfare Agencies. – Public and private child welfare agencies providing encouragement, care, and protection to any category of children and youth whether mentally gifted, dependent, abandoned, neglected, abused, handicapped, disturbed, or youthful offenders, classified and defined as follows, shall be coordinated by the Department of Social Welfare and Development:

(1) A *child-caring institution* is one that provides 24-hour resident group care service for the physical, mental, social and spiritual well-being of nine or more mentally gifted, dependent, abandoned, neglected, handicapped or disturbed children, or youthful offenders.

An institution, whose primary purpose is education, is deemed to be a child-caring institution when nine or more of its pupils or wards in the ordinary course of events do not return annually to the homes of their parents or guardians for at least two months of summer vacation.

(2) A *detention home* is a 24-hour child-caring institution providing short term resident care for youthful offenders who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.

(3) A *shelter-care institution* is one that provides temporary protection and care to children requiring emergency reception as a result of fortuitous events, abandonment by parents, dangerous conditions of neglect or cruelty in the home, being without adult care because of crises in the family, or a court order holding them as material witnesses.

(4) *Receiving homes* are family-type homes which provide temporary shelter from 10 to 20 days for children who shall during this period be under observation and study for eventual placement by the Department of Social Welfare and Development. The number of children in a receiving home shall not at any time exceed nine: *Provided,* That no more than two of them shall be under three years of age.

(5) A *nursery* is a child-caring institution that provides care for six or more children below six years of age for all or part of a 24 hour day, except those duly licensed to offer primarily medical and educational services.

(6) A *maternity home* is an institution or place of residence whose primary function is to give shelter and care to pregnant women and their infants before, during and after delivery.

(7) A *rehabilitation center* is an institution that receives and rehabilitates youthful offenders or other disturbed children.

(8) A *reception and study center* is an institution that receives for study, diagnosis, and temporary treatment, children who have behavioral problems for the purpose of determining the appropriate care for them or recommending their permanent treatment or rehabilitation in other child welfare agencies.

(9) A *child-placing agency* is an institution or person assuming the care, custody, protection and maintenance of children for placement in any child-caring institution or home or under the care and custody of any person or persons for purposes of adoption, guardianship or foster care. The relatives of such child or children within the sixth degree of consanguinity or affinity are excluded from this definition.

ART. 118. License Required. – No private person, natural or juridical, shall establish, temporarily or permanently, any child welfare agency without first securing a license from the Department of Social Welfare and Development.

Such license shall not be transferable and shall be used only by the person or institution to which it was issued at the place stated therein.

No license shall be granted unless the purpose or function of the agency is clearly defined and stated in writing. Such definition shall include the geographical area to be served, the children to be accepted for care, and the services to be provided.

If the applicant is a juridical person, it must be registered in accordance with Philippine laws.

ART. 119. Guiding Principles. – The protection and best interests of the child or children therein shall be the first and basic consideration in the granting, suspension or revocation of the license mentioned in the preceding article.

ART. 120. Revocation or Suspension of License. – The Department of Social Welfare and Development may, after notice and hearing, suspend or revoke the license of a child welfare agency on any of the following grounds:

- (1) That the agency is being used for immoral purposes;
- (2) That said agency is insolvent or is not in a financial position to support and maintain the children therein or to perform the functions for which it was granted license;
- (3) That the children therein are being neglected or are undernourished;
- (4) That the place is so unsanitary so as to make it unfit for children;
- (5) That said agency is located in a place or community where children should not be, or is physically dangerous to children or would unduly expose children to crime, vice, immorality, corruption or severe cruelty; or
- (6) That said agency has by any act or omission shown its incompetence or unworthiness to continue acting as a child welfare agency. During the period of suspension, the agency concerned shall not accept or admit any additional children. In any case, the Department of Social Welfare and Development shall make such order as to the care of such agency as the circumstances may warrant. The suspension may last for as long as the agency has not complied with any order of the Department of Social Welfare and Development to remove or remedy the conditions which gave rise to the suspension. The aggrieved agency may appeal the suspension and/or revocation in a proper court action. In such case, the court shall within 15 days from the filing of the Department of Social Welfare and Development's answer, conduct a hearing and decide the case, either by lifting the suspension, or continuing it for such period of time as it may order, or by revoking the license of the agency where the Department of Social Welfare and Development has proven the revocation to be justified.

ART. 121. Responsible Government Body. – The governing body of a child welfare agency or institution shall be composed of civic leaders or of persons of good standing in the community. The administrator must be a competent person qualified by education or experience or both to serve as such.

ART. 122. Child-Caring Institution Serving as Child-Placement Agency. – An association or corporation may be both a child-caring institution and a child-placement agency and it may be licensed to carry out both types of service.

When a license also serves as a child-placement agency, it shall maintain a staff equipped by training to make thorough studies of every prospective family home. Staff arrangements must also be made for continuing supervision of the children staying in family homes so long as the children remain in the legal custody of the agency.

ART. 123. Responsible Staff of Employees. – The licensee shall choose its employees who shall be persons of good health and character, and whenever possible, the higher rank of employees shall in addition have training, preferably in child psychology.

ART. 124. Intake Study and Periodic Investigations. – The licensee shall undertake investigations to determine if the acceptance or continued stay of a child in its institution is necessary. Each licensee shall make provisions for continuing services, including social casework for every child under its care.

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ART. 125. Records. – The licensee shall keep confidential records of every child in its study. These records shall be made available only to such persons as may be authorized by the Department of Social Welfare and Development or by the proper court.

ART. 126. Home Atmosphere. – Child welfare agencies shall endeavor to provide the children with a pleasant atmosphere that shall approximate as nearly as possible the conditions of an ideal home. Vocational rehabilitation shall also be provided in accordance with existing law and the particular needs of the children.

ART. 127. Adequate Diet. – The licensee shall provide a varied and balanced diet to satisfy the child's total nutritional requirements.

ART. 128. Clothing. – The licensee shall furnish clean, comfortable, and appropriate clothing for every child under its care.

ART. 129. Physical Surrounding and Outings. – The licensee shall maintain a building adequate both in ventilation and sanitation, and with a safe, clean and spacious playground.

Regular inexpensive periodic outing shall be an important part of its activities in order to make the children aware of their vital role in their community and country.

ART. 130. Medical and Nursing Care. – The licensee shall provide adequate medical and nursing care for sick children who may be confined due to illness.

ART. 131. Religious Training. – The licensee shall provide opportunities for religious training to children under its custody, taking into consideration the religious affiliation or express wishes of the child or his parents. For such purpose, it shall have a defined policy regarding its religious activities for the information of those wishing to place children in its care.

ART. 132. Annual Report. – Every child welfare agency or institution shall submit to the Department of Social Welfare and Development an annual report setting forth a brief summary of its operations during the preceding year, including the funds received during said period, the sources thereof, the purposes for which they were spent and the cash position of the agency or institution as of the date of the report, number of children admitted, and such other information as may be required by the Department of Social Welfare and Development.

CHAPTER II

COLLABORATION BETWEEN THE HOME AND THE STATE

ARTICLE 133. Healthy Growth of Children. – Pursuant to its obligation to assist the parents in the proper upbringing of the child, the State shall, whenever possible, in collaboration and cooperation with local government establish:

- (1) Puericulture and similar centers;
- (2) Juvenile courts;
- (3) Child welfare agencies;
- (4) Orphanages and other similar institutions; and
- (5) Children's recreation centers.

ART. 134. Puericulture or Health Centers. – Puericulture or health centers shall be established in every *barangay* to perform, among other things, the following functions:

- (1) Disseminate information concerning the health of children and expectant or nursing mothers;

- (2) Provide consultation service and treatment, whenever necessary, for the children and the expectant or nursing mothers;
- (3) Provide guidance and special treatment to children with physical handicaps; and
- (4) Advise child welfare institutions on matters relating to nutrition and hygiene.

ART. 135. *Juvenile and Domestic Relations Courts.* – Juvenile and Domestic Relations Courts shall, as far as practicable, be established in every province or city to hear and decide cases involving juvenile and domestic problems.

ART. 136. *Regional Child Welfare Agencies.* – The State shall, whenever practicable, establish regional child welfare agencies, orphanages and other similar institutions to provide care for the children mentioned in Title VIII of this Code.

ART. 137. *Children’s Reading and Recreation Centers.* – The State shall establish in every *barangay* reading centers and recreation centers where children may meet and play together for their healthy growth and their social and cultural development.

ART. 138. *Parent Education Program.* – The Department of Social Welfare and Development shall from time to time hold a Parent Education Congress, which shall aim to enable parents to understand child growth and development, parent-child relationship, family life, and family-community relationship, and to improve their ability to discharge their duties.

ART. 139. *Curfew Hours for Children.* – City or municipal councils may prescribe such curfew hours for children as may be warranted by local conditions. The duty to enforce curfew ordinances shall devolve upon the parents or guardians and the local authorities.

Any parent or guardian found grossly negligent in the performance of the duty imposed by this article shall be admonished by the Department of Social Welfare and Development or the Council for the Protection of Children.

ART. 140. *State Aid in Case of Public Calamity.* – In case of earthquake, flood, storm, conflagration, epidemic, or other calamity, the State shall give special assistance to children whenever necessary. The Department of Social Welfare and Development shall take immediate custody of dependent children and give temporary shelter to orphaned or displaced children (who are separated from their parents or guardian).

TITLE VIII

SPECIAL CATEGORIES OF CHILDREN

CHAPTER I

DEPENDENT, ABANDONED AND NEGLECTED CHILDREN

ARTICLE 141. *Definition of Terms.* – As used in this Chapter:

- (1) A dependent child is one who is without a parent, guardian or custodian; or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody; and is dependent upon the public for support.
- (2) An abandoned child is one who has no proper parental care or guardianship, or whose parents or guardians have deserted him for a period of at least six continuous months.
- (3) A neglected child is one whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways:

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(a) There is a physical neglect when the child is malnourished, ill clad and without proper shelter.

A child is unattended when left by himself without provisions for his needs and/or without proper supervision.

(b) Emotional neglect exists: when children are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in moral danger, or exposed to gambling, prostitution and other vices.

(4) Commitment or surrender of a child is the legal act of entrusting a child to the care of the Department of Social Welfare and Development or any duly licensed child placement agency or individual.

Commitment may be done in the following manner:

(a) Involuntary commitment, in case of a dependent child, or through the termination of parental or guardianship rights by reason of abandonment, substantial and continuous or repeated neglect and/or parental incompetence to discharge parental responsibilities, and in the manner, form and procedure hereinafter prescribed.

(b) Voluntary commitment, through the relinquishment of parental or guardianship rights in the manner and form hereinafter prescribed.

ART. 142. *Petition for Involuntary Commitment of a Child; Venue.* – The Department of Social Welfare and Development Secretary or his authorized representative or any duly licensed child placement agency having knowledge of a child who appears to be dependent, abandoned or neglected, may file a verified petition for involuntary commitment of said child to the care of any duly licensed child placement agency or individual.

The petition shall be filed with the Juvenile and Domestic Relations Court, if any, or with the Court of First Instance of the province or City Court in which the parents or guardian resides or the child is found.

ART. 143. *Contents of Petition; Verification.* – The petition for commitment must state so far as known to the petitioner:

- (1) The facts showing that the child is dependent, abandoned, or neglected;
- (2) The names of the parent or parents, if known, and their residences. If the child has no parent or parents living, then the name and residence of the guardian, if any; and
- (3) The name of the duly licensed child placement agency or individual to whose care the commitment of the child is sought.

The petition shall be verified and shall be sufficient if based upon the information and belief of the petitioner.

ART. 144. *Court to Set Time for Hearing; Summons.* – When a petition for commitment is filed, the court shall fix a date for the hearing thereof. If it appears from the petition that one or both parents of the child, or the guardian, resides in province or city, the clerk of court shall immediately issue summons, together with a copy of the petition, which shall be served on such parent or guardian not less than two days before the time fixed for the hearing. Such summons shall require them to appear before the court on the date mentioned.

ART. 145. *When Summons shall not be Issued.* – The summons provided for in the next preceding article shall not be issued and the court shall thereupon proceed with the hearing of the case if it appears from the petition that both parents of the child are dead or that neither parent can be found in the province or city and that the child has no guardian residing therein.

ART. 146. *Representation of Child.* – If it appears that neither of the parents nor the guardian of the child can be found in the province or city, it shall be the duty of the court to appoint some suitable person to represent him.

ART. 147. Duty of Fiscal. – The provincial or city fiscal shall appear for the State, seeing to it that there has been due notice to all parties concerned and that there is justification for the declaration of dependency, abandonment or neglect.

The legal services section of the Department of Social Welfare and Development, any recognized legal association, or any appointed *de officio* counsel shall prepare the petition for the Secretary of the Department of Social Welfare and Development, his representative or the head of the duly licensed child placement agency, or the duly licensed individual and represent him in court in all proceedings arising under the provisions of this Chapter.

ART. 148. Hearing. – During the hearing of the petition, the child shall be brought before the court, which shall investigate the facts and ascertain whether he is dependent, abandoned, or neglected, and, if so, the cause and circumstances of such condition. In such hearing, the court shall not be bound by the technical rules of evidence.

Failure to provide for the child's support for a period of six months shall be presumptive evidence of the intent to abandon.

ART. 149. Commitment of Child. – If, after the hearing, the child is found to be dependent, abandoned, or neglected, an order shall be entered committing him to the care and custody of the Department of Social Welfare and Development or any duly licensed child placement agency or individual.

ART. 150. When Child May Stay in His Own Home. – If in the court's opinion the cases of the abandonment or neglect of any child may be remedied, it may permit the child to stay in his own home and under the care and control of his own parents or guardian, subject to the supervision and direction of the Department of Social Welfare and Development.

When it appears to the court that it is no longer for the best interests of such child to remain with his parents or guardian, it may commit the child in accordance with the next preceding article.

ART. 151. Termination of Rights of Parents. – When a child shall have been committed to the Department of Social Welfare and Development or any duly licensed child placement agency or individual pursuant to an order of the court, his parents or guardian shall thereafter exercise no authority over him except upon such conditions as the court may impose.

ART. 152. Authority of Person, Agency or Institution. – The Department of Social Welfare and Development or any duly licensed child placement agency or individual receiving a child pursuant to an order of the court shall be the legal guardian and entitled to his legal custody and control, be responsible for his support as defined by law, and when proper, shall have authority to give consent to his placement, guardianship and/or adoption.

ART. 153. Change of Custody. – The Department of Social Welfare and Development shall have the authority to change the custody of a child committed to any duly licensed child placement agency or individual if it appears that such change is for the best interests of the child. However, when conflicting interests arise among child placement agencies the court shall order the change of commitment of the child.

ART. 154. Voluntary Commitment of a Child to an Institution. – The parent or guardian of a dependent, abandoned or neglected child may voluntarily commit him to the Department of Social Welfare and Development or any duly licensed child placement agency or individual subject to the provisions of the next succeeding articles.

ART. 155. Commitment Must be in Writing. – No child shall be committed pursuant to the preceding article unless he is surrendered in writing by his parents or guardian to the care and custody of the Department of Social Welfare and Development or duly licensed child placement agency. In case of the death or legal incapacity of either parent or abandonment of the child for a period of at least one year, the other parent alone shall have the authority to make the commitment. The Department of Social Welfare and Development, or any proper and duly licensed child

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placement agency or individual shall have the authority to receive, train, educate, care for or arrange appropriate placement of such child.

ART. 156. Legal Custody. – When any child shall have been committed in accordance with the preceding article and such shall have been accepted by the Department of Social Welfare and Development or any duly licensed child placement agency or individual, the rights of his natural parents, guardian, or other custodian to exercise parental authority over him shall cease. Such agency or individual shall be entitled to the custody and control of such child during his minority, and shall have authority to care for, educate, train and place him out temporarily or for custody and care in a duly licensed child placement agency. Such agency or individual may intervene in adoption proceedings in such manner as shall best inure to the child's welfare.

ART. 157. Visitation or Inspection. – Any duly licensed child placement agency or individual receiving a judicial order or by voluntary commitment by his parents or guardian shall be subject to visitation or inspection by a representative of the court or of the Department of Social Welfare and Development or both, as the case may be.

ART. 158. Report of Person or Institution. – Any duly licensed child placement agency or individual receiving a child for commitment may at any time be required by the Department of Social Welfare and Development to submit a report, copy furnished the court, containing all necessary information for determining whether the welfare of the child is being served.

ART. 159. Temporary Custody of Child. – Subject to regulation by the Department of Social Welfare and Development and with the permission of the court in case of judicial commitment, the competent authorities of any duly licensed child placement agency or individual to which a child has been committed may place him in the care of any suitable person, at the latter's request, for a period not exceeding one month at a time.

The temporary custody of the child shall be discontinued if it appears that he is not being given proper care, or at his own request, or at the instance of the agency or person receiving him.

ART. 160. Prohibited Acts. – It shall be unlawful for any child to leave the person or institution to which he has been judicially or voluntarily committed or the person under whose custody he has been placed in accordance with the next preceding article, or for any person to induce him to leave such person or institution, except in case of grave physical or moral danger, actual or imminent, to the child.

Any violation of this article shall be punishable by an imprisonment of not more than one year or by a fine of not more than Two Thousand Pesos (P2,000), or both such fine and imprisonment at the discretion of the court: *Provided*, That if the violation is committed by a foreigner, he shall also be subject to deportation.

If the violation is committed by a parent or legal guardian of the child, such fact shall aggravate or mitigate the offense as circumstances shall warrant.

ART. 161. Duty to Report Abandonment. – When the parents or persons entitled to act as guardian of a child are dead or, if living, have abandoned him, for no valid reason, for at least six months in a duly licensed child placement agency or hospital, or left him with any other person for the same period without providing for his care and support, such fact shall be reported immediately to the Department of Social Welfare and Development. In case of a child left in a hospital, immediate transfer of the child to the Department of Social Welfare and Development or any duly licensed child placement agency must be arranged. The Department of Social Welfare and Development shall make provisions for the adequate care and support of the child and shall take such action as it may deem proper for his best interests.

ART. 162. Adoption of Dependent or Abandoned or Neglected Child. – Upon the filing of an application by any person to adopt a dependent, abandoned or neglected child in the custody of any institution or individual mentioned in Article 156, it shall be the duty of the provincial or city fiscal, any recognized legal association, or any appointed *de officio* counsel upon being informed of such fact, to represent the Department of Social Welfare and Development in the proceedings. The costs of such proceedings shall be *de officio*.

ART. 163. Restoration of Child After Involuntary Commitment. – The parents or guardian of a child committed to the care of a person, agency or institution by judicial order may petition the proper court for the restoration of his rights over the child: *Provided*, That the child in the meantime, has not been priorily given away in adoption nor has left the country with the adopting parents or the guardian. The petition shall be verified and shall state that the petitioner is now able to take proper care and custody of said child.

Upon receiving the petition, the court shall fix the time for hearing the questions raised thereby and cause reasonable notice thereof to be sent to the petitioner and to the person, agency or institution to which the child has been committed. At the trial, any person may be allowed, at the discretion of the court, to contest the right to the relief demanded, and witnesses may be called and examined by the parties or by the court *motu proprio*. If it is found that the cause for the commitment of the child no longer exists and that the petitioner is already able to take proper care and custody of the child, the court, after taking into consideration the best interests and the welfare of the child, shall render judgment restoring parental authority to the petitioner.

ART. 164. Restoration After Voluntary Commitment. – Upon petition filed with the Department of Social Welfare and Development the parent or parents or guardian who voluntarily committed a child may recover legal custody and parental authority over him from the agency, individual or institution to which such child was voluntarily committed when it is shown to the satisfaction of the Department of Social Welfare and Development that the parent, parents or guardian is in a position to adequately provide for the needs of the child: *Provided*, That, the petition for restoration is filed within six months after the surrender.

In all cases, the person, agency or institution having legal custody of the child shall be furnished with a copy of the petition and shall be given the opportunity to be heard.

ART. 165. Removal of Custody. – A petition to transfer custody of a child may be filed against a person or child welfare agency to whose custody a child has been committed by the court based on neglect of such child as defined in Article 141(3). If the court, after notice and hearing, is satisfied that the allegations of the petition are true and that it is for the best interest and welfare of the child the court shall issue an order taking him from the custody of the person or agency, as the case may be, and committing him to the custody of another duly licensed child placement agency or individual.

The license of the agency or individual found guilty of such neglect may be suspended or revoked, as the court may deem proper, in the same proceeding.

ART. 166. Report of Maltreated or Abused Child. – All hospitals, clinics and other institutions as well as private physicians providing treatment shall, within 48 hours from knowledge of the case, report in writing to the city or provincial fiscal or to the Local Council for the Protection of Children or to the nearest unit of the Department of Social Welfare and Development, any case of a maltreated or abused child, or exploitation of an employed child contrary to the provisions of labor laws. It shall be the duty of the Council for the Protection of Children or the unit of the Department of Social Welfare and Development to whom such a report is made to forward the same to the provincial or city fiscal.

Violation of this provision shall subject the hospital, clinic, institution, or physician who fails to make such report to a fine of not more than Two Thousand Pesos (P2,000).

In cases of sexual abuse, the records pertaining to the case shall be kept strictly confidential and no information relating thereto shall be disclosed except in connection with any court or official proceeding based on such report. Any person disclosing confidential information in violation of this provision shall be punished by a fine of not less than One Hundred Pesos (P100) nor more than Five Hundred Thousand Pesos (P500,000), or by imprisonment for not less than 30 days nor more than one year, or both such fine and imprisonment, at the discretion of the court.

ART. 167. Freedom from Liability of Reporting Person or Institution. – Persons, organizations, physicians, nurses, hospitals, clinics and other entities which shall in good faith report cases of child abuse, neglect, maltreatment or abandonment or exposure to moral danger be free from any civil or criminal liability arising therefrom.

CHAPTER II

MENTALLY RETARDED, PHYSICALLY HANDICAPPED, EMOTIONALLY DISTURBED AND MENTALLY ILL CHILDREN

ARTICLE 168. *Mentally Retarded Children.* – Mentally retarded children are (1) socially incompetent and unable to manage their own affairs; (2) mentally subnormal; (3) retarded intellectually from birth or early age; (4) retarded at maturity; (5) mentally deficient as a result of constitutional origin, through hereditary or disease, and (6) essentially incurable.

ART. 169. *Classification of Mental Retardation.* – Mental Retardation is divided into four classifications:

- (1) *Custodial Group.* The members of this classification are severely or profoundly retarded, hence, the least capable group. This includes those with IQs to 25.
- (2) *Trainable Group.* The members of this group consist of those with IQs from about 25 to about 50; one who belongs to this group shows a mental level and rate of development which is one-fourth to one-half that of the average child, is unable to acquire higher academic skills, but can usually acquire the basic skills for living to a reasonable degree. He can likewise attain a primary grade level of education if he receives effective instruction.
- (3) *Educable Group.* This group's IQ ranges from about 50 to about 75, and the intellectual development is approximately one-half to three-fourth of that expected of a normal child of the same chronological age. The degree of success or accomplishment that they will reach in life depends very much on the quality and type of education they receive, as well as on the treatment at home and in the community. Many of the educable retardates may reach fifth or sixth grade educational level and can develop occupational skills which may result in partial or complete economic independence in adulthood.
- (4) *Borderline or Low Normal Group.* This is the highest group of mentally retarded, with IQs from about 75 to about 89. The members of this classification are only slightly retarded and they can usually get by in regular classes if they receive some extra help, guidance and consideration. They have to spend much more time with their studies than do most children in order to pass. Those who cannot make it are usually handicapped by one or more other conditions aside from that of intelligence.

ART. 170. *Physically Handicapped Children.* – Physically handicapped children are those who are crippled, deaf-mute, blind, or otherwise defective which restricts their means of action on communication with others.

ART. 171. *Emotionally Disturbed Children.* – Emotionally disturbed children are those who, although not afflicted with insanity or mental defect, are unable to maintain normal social relations with others and the community in general due to emotional problems or complexes.

ART. 172. *Mentally Ill Children.* – Mentally ill children are those with any behavioral disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.

ART. 173. *Admission of Disabled Children.* – The Department of Social Welfare and Development, upon the application of the parents or guardians and the recommendation of any reputable diagnostic center or clinic, shall refer and/or admit disabled children to any public or private institution providing the proper care, training and rehabilitation.

“Disabled children” as used in this Chapter shall include mentally retarded, physically handicapped, emotionally disturbed, and severe mentally ill children.

ART. 174. *Training and Opportunities for Disabled Children.* – Specialized educational services shall be expanded and improved to provide appropriate opportunities for disabled children. Vocational rehabilitation and manpower conservation agencies shall train disabled children for specialized types of jobs, services and business which could be learned only by them and shall help provide opportunities for their future occupational placement. That the agencies and organizations engaged in programs and services for the disabled need not be limited to minors. Persons of legal age may be admitted whenever facilities are available for them.

ART. 175. *Planning of Programs and Services.* – Selected pilot demonstration projects needed by the disabled children shall be developed and shall be the basis for planning expanded programs and services throughout the nation. There shall be established area centers designed to bring together an aggregate of services to serve all ages of the disabled within a specified geographical area.

ART. 176. *Donations.* – Donations to agencies and organizations engaged in programs and services for disabled children shall be deductible in accordance with the provision of Presidential Decree No. 507.

ART. 177. *Petition for Commitment.* – Where a child appears to be mentally retarded, physically handicapped, emotionally disturbed, or mentally ill, and needs institutional care but his parents or guardian are opposed thereto, the Department of Social Welfare and Development, or any duly licensed child placement agency or individual shall have the authority to file a petition for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children.

The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when the welfare and interest of the child is at stake.

ART. 178. *Venue.* – The petition for commitment of a disabled child shall be filed with the Juvenile and Domestic Relations Court, if any, or with the Court of First Instance of the province or City Court where the parent or guardian resides or where the child is found.

ART. 179. *Contents of Petition.* – The petition for commitment must state so far as known to the petitioner:

- (1) The facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed or mentally ill and needs institutional care;
- (2) The fact that the parents or guardian or any duly licensed disabled child placement agency, as the case may be, has opposed the commitment of such child;
- (3) The name of the parents and their residence, if known or if the child has no parents or parent living, the names and residence of the guardian, if any; and
- (4) The name of the institution where the child is to be committed.

The petition shall be verified and shall be sufficient if based upon the information and belief of the petitioner.

ART. 180. *Order of Hearing.* – If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix the date for the hearing thereof, and a copy of such order shall be served on the child alleged to be mentally retarded, or physically handicapped, or emotionally disturbed, or mentally ill, and on the person having charge of him or any of his relatives residing in the province or city as the judge may deem proper. The court shall furthermore order the sheriff to produce, if possible, the alleged disabled child on the date of the hearing.

ART. 181. *Hearing and Judgment.* – Upon satisfactory proof that the institutional care of the child is for him or the public welfare and that his parents, or guardian or relatives are unable for any reason to take proper care of him, the Court shall order his commitment to the proper institution for disabled children.

ART. 182. *Disposition of Property or Money.* – The Court, in its order of commitment, shall make proper provisions for the custody of property or money belonging to the committed child.

ART. 183. *Findings and Other Data.* – The Court shall furnish the institution to which the child has been committed with a copy of its judgment, together with all the social and other data pertinent to the case.

ART. 184. *Expenses.* – The expenses of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

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In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the next preceding paragraph, the same, or such part thereof as may remain unpaid, shall be borne by the Department of Social Welfare and Development.

ART. 185. *Children with Cerebral Palsy.* – Children afflicted with cerebral palsy shall be committed to the institution which under the circumstances of the particular child concerned is best equipped to treat and care for him.

ART. 186. *Discharge of Child Judicially Committed.* – The Court shall order the discharge of any child judicially committed to an institution for disabled children if it is certified by the Department of Social Welfare and Development that:

- (1) He has been certified by the duly licensed child placement agency to be no longer a hazard to himself or to the community;
- (2) He has been sufficiently rehabilitated from his physical handicap or, if of work age, is already fit to engage in a gainful occupation; or
- (3) He has been relieved of his emotional problems and complexes and is ready to assume normal social relations.

ART. 187. *Discharge of Child Voluntarily Committed.* – Any child voluntarily committed to an institution for disabled children may be discharged by the Department of Social Welfare and Development *motu proprio* or upon the request of his parents or guardian on any of the grounds specified in the preceding article. In the latter case, the Department of Social Welfare and Development may refuse to discharge the child if, in its opinion, his release would be prejudicial to him or to the community.

ART. 188. *Assistance of Fiscal.* – The provincial or city fiscal shall represent the Department of Social Welfare and Development or any recognized legal association in all judicial matters arising under the provisions of this Chapter.

CHAPTER III

YOUTHFUL OFFENDERS

ARTICLE 189. *Youthful Offender, Defined.* – A youthful offender is a child, minor, or youth, including one who is emancipated in accordance with law, who is over nine years but under 18 years of age at the time of the commission of the offense.

A child nine years of age or under at the time of the commission of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under 15 years of age at the time of the commission of the offense, unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192. The provisions of Article 80 of the Revised Penal Code are hereby repealed by the provisions of this Chapter. (*As amended by Presidential Decree No. 1179.*)

ART. 190. *Physical and Mental Examination.* – It shall be the duty of the law-enforcement agency concerned to take the youthful offender, after his apprehension, to any available government medical or health officer in the area for a physical and mental examination. Whenever treatment for any physical or mental defect is indicated, steps shall be immediately undertaken to provide the same.

The examination and treatment papers shall form part of the record of the case of the youthful offender. (*As amended by Presidential Decree No. 1179.*)

ART. 191. *Care of Youthful Offender Held for Examination or Trial.* – A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare and Development or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required: *Provided,*

That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Welfare and Development or other agency or agencies authorized by the Court, release a youthful offender on recognizance to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required. However, in the case of those whose cases fall under the exclusive jurisdiction of the Military Tribunals they may be committed at any military detention or rehabilitation center. *(As amended by Presidential Decree Nos. 1179 and 1210, promulgated October 11, 1977.)*

ART. 192. *Suspension of Sentence and Commitment of Youthful Offender.* – If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court, shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court upon application of the youthful offender and if it finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Welfare and Development and/or to any training institution operated by the government or any other responsible person until he shall have reached 21 years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the government training institution or responsible person under whose care he has been committed.

Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.

The youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Welfare and Development or government training institution as the court may designate subject to such conditions as it may prescribe.

The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of a sentence under its provisions or to one who is convicted of an offense punishable by death or life imprisonment or to one who is convicted for an offense by the Military Tribunals. *(As amended by Presidential Decree Nos. 1179 and 1210.)*

ART. 193. *Appeal.* – The order of the court denying an application for suspension of sentence under the provisions of Article 192 above shall not be appealable. *(As amended by Presidential Decree No. 1179.)*

ART. 194. *Care and Maintenance of Youthful Offender.* – The expenses for the care and maintenance of the youthful offender whose sentence has been suspended shall be borne by his parents or those persons liable to support him: *Provided,* That in case his parents or those persons liable to support him can not pay all or part of said expenses, the municipality in which the offense was committed shall pay one-third of said expenses or part thereof; the province to which the municipality belongs shall pay one-third; and the remaining one-third shall be borne by the National Government. Chartered cities shall pay two-thirds of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said indebtedness.

All city and provincial governments must exert efforts for the immediate establishment of local detention homes for youthful offenders.

ART. 195. *Report on Conduct of Child.* – The Department of Social Welfare and Development or government training institution or individual under whose care the youthful offender has been committed shall submit to the court every four months or oftener as may be required in special cases, a written report on the conduct of said youthful offender as well as the intellectual, physical, moral, social and emotional progress made by him. *(As amended by Presidential Decree No. 1179.)*

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ART. 196. Dismissal of the Case. – If it is shown to the satisfaction of the court that the youthful offender whose sentence has been suspended, has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, upon recommendation of the Department of Social Welfare and Development, it shall dismiss the case and order his final discharge.

ART. 197. Return of the Youthful Offender to Court. – Whenever the youthful offender has been found incorrigible or has willfully failed to comply with the conditions of his rehabilitation programs, or should his continued stay in the training institution be inadvisable, he shall be returned to the committing court for the pronouncement of judgment.

When the youthful offender has reached the age of 21 while in commitment, the court shall determine whether to dismiss the case in accordance with the next preceding article or to pronounce the judgment of conviction. In the latter case, the convicted offender may apply for probation under the provisions of Presidential Decree No. 968, as amended.

In any case covered by this article, the youthful offender shall be credited in the service of his sentence with the full time spent in actual commitment and detention effected under the provisions of this Chapter. (*As amended by Presidential Decree No. 1179.*)

ART. 198. Effect of Release of Child Based on Good Conduct. – The final release of a child pursuant to the provisions of this Chapter shall not obliterate his civil liability for damages. Such release shall be without prejudice to the right for a writ of execution for the recovery of civil damages.

ART. 199. Living Quarters for Youthful Offenders Sentenced. – When a judgment of conviction is pronounced in accordance with the provisions of Article 197, and at the time of said pronouncement the youthful offender is still under 21, he shall be committed to the proper penal institution to serve the remaining period of his sentence: *Provided*, That penal institutions shall provide youthful offenders with separate quarters and, as far as practicable, group them according to appropriate age levels or other criteria as will insure their speedy rehabilitation: *Provided*, further, That the Bureau of Prisons shall maintain agricultural and forestry camps where youthful offenders may serve their sentence in lieu of confinement in regular penitentiaries.

ART. 200. Records of Proceedings. – Where a youthful offender has been charged before any city or provincial fiscal or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be considered as privileged and may not be disclosed directly or indirectly to any one for any purpose whatsoever.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to this Chapter, all the records of his case shall also be considered as privileged and may not be disclosed directly or indirectly to anyone except to determine if a defendant may have his sentence suspended under Article 192 of this Decree or if he may be granted probation under the provisions of Presidential Decree No. 968 or to enforce his civil liability, if said liability has been imposed in the criminal action. The youthful offender concerned shall not be held under any provision of law to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him for any purpose.

“Records” within the meaning of this article shall include those which may be in the files of the National Bureau of Investigation and with any police department, or any other government agency which may have been involved in the case. (*As amended by Presidential Decree No. 1179.*)

ART. 201. Civil Liability of Youthful Offenders. – The civil liability for acts committed by a youthful offender shall devolve upon the offender’s father and, in case of his death or incapacity, upon the mother, or in case of her death or incapacity, upon the guardian. Civil liability may also be voluntarily assumed by a relative or family friend of the youthful offender.

ART. 202. Rehabilitation Centers. – The Department of Social Welfare and Development shall establish regional rehabilitation centers for youthful offenders. The local government and other non-governmental entities shall collaborate and contribute their support for the establishment and maintenance of these facilities.

ART. 203. Detention Homes. – The Department of Local Government and Community Development shall establish detention homes in cities and provinces distinct and separate from jails pending the disposition of cases of juvenile offenders.

ART. 204. Liability of Parents or Guardian or Any Person in the Commission of Delinquent Acts by Their Children or Wards. – A person whether the parent or guardian of the child or not, who knowingly or willfully:

- (1) Aids, causes, abets or connives with the commission by a child of a delinquency, or
- (2) Does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent, shall be punished by a fine not exceeding Five Hundred Pesos (P500) or to imprisonment for a period not exceeding two years, or both such fine and imprisonment, at the discretion of the court.

TITLE IX

COUNCIL FOR THE WELFARE OF CHILDREN AND YOUTH

CHAPTER I

CREATION AND COMPOSITION

ARTICLE 205. Creation of the Council for the Welfare of Children. – A Council for the Welfare of Children is hereby established under the Office of the President. The Council shall be composed of the Secretary of Social Welfare as Chairman, and seven members, namely: the Secretary of Justice, the Secretary of Labor, the Secretary of Education and Culture, the Secretary of Health, the Presiding Judge of the Juvenile and Domestic Relations Court, City of Manila, and two representatives of voluntary welfare associations to be appointed by the President of the Philippines, each of whom shall hold office for a term two years.

There shall be a permanent Secretariat for the Council headed by an Executive Director, to be appointed by the Chairman and approved by a majority of the members of the Council.

For actual attendance at regular meetings, the Chairman and each member of the Council shall receive a *per diem* of One Hundred Pesos (P100) for every meeting actually attended, but the total amount of *per diem* that the Chairman and a member may receive in a month shall in no case exceed Five Hundred Pesos (P500).

ART. 206. Appropriation. – The sum of Five Million Pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, for the operation and maintenance of the Council for the Welfare of Children and Youth during the fiscal year. Thereafter, such sums as may be necessary for its operation and maintenance shall be included in the General Appropriations Decree.

CHAPTER II

POWERS AND RESPONSIBILITIES

ARTICLE 207. Powers and Functions. – The Council for the Welfare of Children and Youth shall have the following powers and functions:

- (1) To coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare;
- (2) To prepare, submit to the President and circulate copies of long-range programs and goals for the physical, intellectual, emotional, moral, spiritual, and social development of children and youth, and to submit to him an annual report of the progress thereof;
- (3) To formulate policies and devise, introduce, develop and evaluate programs and services for the general welfare of children and youth;
- (4) To call upon and utilize any department, bureau, office, agency, or instrumentality, public, private or voluntary, for such assistance as it may require in the performance of its functions;
- (5) Perform such other functions as provided by law.

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ART. 208. Offices to Coordinate with the Council for Welfare of Children. – The following offices and agencies shall coordinate with the Council for the Welfare of Children and Youth in the implementation of laws and programs on child and youth welfare:

- (1) Department of Justice;
- (2) Department of Social Welfare and Development;
- (3) Department of Education, Culture and Sports;
- (4) Department of Labor;
- (5) Department of Health;
- (6) Department of Agriculture;
- (7) Department of Local Government and Community Development; and
- (8) Local Councils for the Protection of Children; and such other government and private agencies which have programs on child and youth welfare.

Existing as well as proposed programs of the abovenamed agencies as well as other government and private child and youth welfare agencies as may be hereafter created shall be implemented by such agencies: *Provided*, That, with the exception of those proposed by the Local Councils for the Protection of Children, all long-range child and youth welfare programs shall, before implementation, be indorsed by the agencies concerned to their respective departments, which shall in turn indorse the same to the Council for the Welfare of Children and Youth, for evaluation, cooperation and coordination.

CHAPTER III

IMPLEMENTATION OF CODE AND RULE-MAKING AUTHORITY

ARTICLE 209. Implementation of this Code and Rule-Making Authority. – The enforcement and implementation of this Code shall be the primary responsibility of the Council for the Welfare of Children. Said Council shall have authority to promulgate the necessary rules and regulations for the purpose of carrying into effect the provisions of this Code.

FINAL PROVISIONS

ARTICLE 210. General Penalty. – Violations of any provisions of this Code for which no penalty is specifically provided shall be punished by imprisonment not exceeding one month or a fine not exceeding Two Hundred Pesos (P200), or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws.

ART. 211. Repealing Clause. – All laws or parts of any laws inconsistent with the provisions of this Code are hereby repealed or modified accordingly: *Provided*, That the provisions of the Dangerous Drugs Act of 1972 and amendments thereto shall continue to be in force and shall not be deemed modified or repealed by any provisions of this Code.

ART. 212. Separability Clause. – If any provision of this Code is held invalid, the other provisions not affected thereby shall continue in operation.

ART. 213. Effectivity Clause. – This Code shall take effect six months after its approval.

PRESIDENTIAL DECREE No. 2018
FURTHER AMENDING ARTICLES 38 AND 39 OF THE LABOR CODE BY MAKING ILLEGAL RECRUITMENT A
CRIME OF ECONOMIC SABOTAGE AND PUNISHABLE WITH LIFE IMPRISONMENT
Approved on January 26, 1986

WHEREAS, despite existing provisions of law and the continuing efforts to eliminate them, illegal recruiters, have continued to proliferate and victimize unwary workers;

WHEREAS, illegal recruiters have defrauded and caused untold sufferings to thousands of Filipino workers and their families;

WHEREAS, experience shows that because of light penalties, illegal recruiters have become more callous and bolder in their modus operandi and usually carry out their activities as syndicates or in large scale;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

SECTION 1. Articles 38 and 39 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby further amended to read as follows:

ART. 38. *Illegal Recruitment.*

- (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officers may initiate complaints under this Article.
- (b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under this first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three or more persons individually or as a group.

- (c) The Minister of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-license or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the search of the office or premises and seizure of documents paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishment and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.

ART. 39. *Penalties.*

- (a) The penalty of imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein;
- (b) Any licensee or holder of authority found violating or causing another to violate any provision of this Title or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than two years nor more than five years or a fine of not less than P10,000 nor more than P50,000 or both such imprisonment and fine, at the discretion of the court;
- (c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the Court;

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- (d) If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; and if such officer is an alien, he shall, in addition to the penalties herein prescribed be deported without further proceedings;
- (e) In every case, conviction shall cause and carry the automatic revocation of the license or authority and all the permits and privileges granted to such person or entity under this Title, and the forfeiture of the cash and surety bonds in favor of the Overseas Employment Development Board or the National Seamen Board, as the case may be, both of which are authorized to use the same exclusively to promote their objectives.

SECTION 2. This Decree shall take effect immediately.

EXECUTIVE ORDER No. 209
THE FAMILY CODE OF THE PHILIPPINES
Approved on July 6, 1987

WHEREAS, almost four decades have passed since the adoption of the Civil Code of the Philippines;

WHEREAS, experience under said Code as well as pervasive changes and developments have necessitated revision of its provisions on marriage and family relations to bring them closer to Filipino customs, values and ideals and reflect contemporary trends and conditions;

WHEREAS, there is a need to implement policies embodied in the new Constitution that strengthen marriage and the family as basic social institutions and ensure equality between men and women.

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and promulgate the Family Code of the Philippines, as follows:

TITLE I

MARRIAGE

CHAPTER 1

REQUISITES OF MARRIAGE

ARTICLE 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code. (52a)

ART. 2. No marriage shall be valid, unless these essential requisites are present:

- (1) Legal capacity of the contracting parties who must be a male and a female; and
- (2) Consent freely given in the presence of the solemnizing officer. (53a)

ART. 3. The formal requisites of marriage are:

- (1) Authority of the solemnizing officer;
- (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
- (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age. (53a, 55a)

ART. 4. The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2).

A defect in any of the essential requisites shall render the marriage voidable as provided in Article 45.

An irregularity in the formal requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable. (n)

ART. 5. Any male or female of the age of 18 years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage. (54a)

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ART. 6. No prescribed form or religious rite for the solemnization of the marriage is required. It shall be necessary, however, for the contracting parties to appear personally before the solemnizing officer and declare in the presence of not less than two witnesses of legal age that they take each other as husband and wife. This declaration shall be contained in the marriage certificate which shall be signed by the contracting parties and their witnesses and attested by the solemnizing officer.

In case of a marriage in *articulo mortis*, when the party at the point of death is unable to sign the marriage certificate, it shall be sufficient for one of the witnesses to the marriage to write the name of said party, which fact shall be attested by the solemnizing officer. (55a)

ART. 7. Marriage may be solemnized by:

- (1) Any incumbent member of the judiciary within the court's jurisdiction;
- (2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted him by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;
- (3) Any ship captain or airplane chief only in cases mentioned in Article 31;
- (4) Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only in the cases mentioned in Article 32; or
- (5) Any consul-general, consul or vice-consul in the case provided in Article 10. (56a)

ART. 8. The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in the cases of marriages contracted at the point of death or in remote places in accordance with Article 29 of this Code, or where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect. (57a)

ART. 9. A marriage license shall be issued by the local civil registrar of the city or municipality where either contracting party habitually resides, except in marriages where no license is required in accordance with Chapter 2 of this Title. (58a)

ART. 10. Marriages between Filipino citizens abroad may be solemnized by a consul-general, consul or vice-consul of the Republic of the Philippines. The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing officer with regard to the celebration of marriage shall be performed by said consular official. (75a)

ART. 11. Where a marriage license is required, each of the contracting parties shall file separately a sworn application for such license with the proper local civil registrar which shall specify the following:

- (1) Full name of the contracting parties;
- (2) Place of birth;
- (3) Age and date of birth;
- (4) Civil status;
- (5) If previously married, how, when and where the previous marriage was dissolved or annulled;
- (6) Present residence and citizenship;
- (7) Degree of relationship of the contracting parties;
- (8) Full name, residence and citizenship of the father;

- (9) Full name, residence and citizenship of the mother; and
- (10) Full name, residence and citizenship of the guardian or person having charge, in case the contracting parties has neither father nor mother and is under the age of 21 years.

The applicants, their parents or guardians shall not be required to exhibit their residence certificates in any formality in connection with the securing of the marriage license. (59a)

ART. 12. The local civil registrar, upon receiving such application, shall require the presentation of the original birth certificates or, in default thereof, the baptismal certificates of the contracting parties or copies of such document duly attested by the persons having custody of the original. These certificates or certified copies of the documents required by this Article need not be sworn to and shall be exempt from the documentary stamp tax. The signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity.

If either of the contracting parties is unable to produce his birth or baptismal certificate or a certified copy of either because of the destruction or loss of the original, or if it is shown by an affidavit of such party or of any other person that such birth or baptismal certificate has not yet been received though the same has been required of the person having custody thereof at least 15 days prior to the date of the application, such party may furnish in lieu thereof his current residence certificate or an instrument drawn up and sworn to before the local civil registrar concerned or any public official authorized to administer oaths. Such instrument shall contain the sworn declaration of two witnesses of lawful age, setting forth the full name, residence and citizenship of such contracting party and of his or her parents, if known, and the place and date of birth of such party. The nearest of kin of the contracting parties shall be preferred as witnesses, or, in their default, persons of good reputation in the province or the locality.

The presentation of the birth or baptismal certificate shall not be required if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, as stated in the application, or when the local civil registrar shall, by merely looking at the applicants upon their personally appearing before him, be convinced that either or both of them have the required age. (60a)

ART. 13. In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse or the judicial decree of the absolute divorce, or the judicial decree of annulment or declaration of nullity of his or her previous marriage. In case the death certificate cannot be secured, the party shall make an affidavit setting forth this circumstance and his or her actual civil status and the name and date of death of the deceased spouse. (61a)

ART. 14. In case either or both of the contracting parties, not having been emancipated by a previous marriage, are between the ages of 18 and 21, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage of their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized by law to administer oaths. The personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said applications. (61a)

ART. 15. Any contracting party between the ages of 21 and 25 shall be obliged to ask their parents or guardian for advice upon the intended marriage. If they do not obtain such advice, or if it be unfavorable, the marriage license shall not be issued till after three months following the completion of the publication of the application therefor. A sworn statement by the contracting parties to the effect that such advice has been sought, together with the written advice given, if any, shall be attached to the application for marriage license. Should the parents or guardian refuse to give any advice, this fact shall be stated in the sworn statement. (62a)

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ART. 16. In the cases where parental consent or parental advice is needed, the party or parties concerned shall, in addition to the requirements of the preceding articles, attach a certificate issued by a priest, imam or minister authorized to solemnize marriage under Article 7 of this Code or a marriage counselor duly accredited by the proper government agency to the effect that the contracting parties have undergone marriage counseling. Failure to attach said certificate of marriage counseling shall suspend the issuance of the marriage license for a period of three months from the completion of the publication of the application. Issuance of the marriage license within the prohibited period shall subject the issuing officer to administrative sanctions but shall not affect the validity of the marriage.

Should only one of the contracting parties need parental consent or parental advice, the other party must be present at the counseling referred to in the preceding paragraph. *(n)*

ART. 17. The local civil registrar shall prepare a notice which shall contain the full names and residences of the applicants for a marriage license and other data given in the applications. The notice shall be posted for 10 consecutive days on a bulletin board outside the office of the local civil registrar located in a conspicuous place within the building and accessible to the general public. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. The marriage license shall be issued after the completion of the period of publication. *(63a)*

ART. 18. In case of any impediment known to the local civil registrar or brought to his attention, he shall note down the particulars thereof and his findings thereon in the application for a marriage license, but shall nonetheless issue said license after the completion of the period of publication, unless ordered otherwise by a competent court at his own instance or that of any interested party. No filing fee shall be charged for the petition nor a corresponding bond required for the issuance of the order. *(64a)*

ART. 19. The local civil registrar shall require the payment of the fees prescribed by law or regulations before the issuance of the marriage license. No other sum shall be collected in the nature of a fee or tax of any kind for the issuance of said license. It shall, however, be issued free of charge to indigent parties, that is, those who have no visible means of income or whose income is insufficient for their subsistence, a fact established by their affidavit, or by their oath before the local civil registrar. *(65a)*

ART. 20. The license shall be valid in any part of the Philippines for a period of one hundred twenty days from the date of issue, and shall be deemed automatically canceled at the expiration of said period if the contracting parties have not made use of it. The expiry date shall be stamped in bold characters on the face of every license issued. *(65a)*

ART. 21. When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials.

Stateless persons or refugees from other countries shall, in lieu of the certificate of legal capacity herein required, submit an affidavit stating the circumstances showing such capacity to contract marriage. *(66a)*

ART. 22. The marriage certificate, in which the parties shall declare that they take each other as husband and wife, shall also state:

- (1) The full name, sex and age of each contracting party;
- (2) Their citizenship, religion and habitual residence;
- (3) The date and precise time of the celebration of the marriage;
- (4) That the proper marriage license has been issued according to law, except in marriages provided for in Chapter 2 of this Title;

- (5) That either or both of the contracting parties have secured the parental consent in appropriate cases;
- (6) That either or both of the contracting parties have complied with the legal requirement regarding parental advice in appropriate cases; and
- (7) That the parties have entered into a marriage settlement, if any, attaching a copy thereof. (67a)

ART. 23. It shall be the duty of the person solemnizing the marriage to furnish either of the contracting parties the original of the marriage certificate referred to in Article 6 and to send the duplicate and triplicate copies of the certificate not later than 15 days after the marriage, to the local civil registrar of the place where the marriage was solemnized. Proper receipt shall be issued by the local civil registrar to the solemnizing officer transmitting copies of the marriage certificate. The solemnizing officer shall retain in his file the quadruplicate copy of the marriage certificate, the original of the marriage license and, in proper cases, the affidavit of the contracting party regarding the solemnization of the marriage in a place other than those mentioned in Article 8. (68a)

ART. 24. It shall be the duty of the local civil registrar to prepare the documents required by this Title, and to administer oaths to all interested parties without any charge in both cases. The documents and affidavits filed in connection with applications for marriage licenses shall be exempt from documentary stamp tax. (n)

ART. 25. The local civil registrar concerned shall enter all applications for marriage licenses filed with him in a registry book strictly in the order in which the same are received. He shall record in said book the names of the applicants, the date on which the marriage license was issued, and such other data as may be necessary. (n)

ART. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law. (n) (As amended by Executive Order No. 227, July 17, 1987)

CHAPTER 2

MARRIAGES EXEMPT FROM LICENSE REQUIREMENT

ARTICLE 27. In case either or both of the contracting parties are at the point of death, the marriage may be solemnized without necessity of a marriage license and shall remain valid even if the ailing party subsequently survives. (72a)

ART. 28. If the residence of either party is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar, the marriage may be solemnized without necessity of a marriage license. (72a)

ART. 29. In the cases provided for in the two preceding articles, the solemnizing officer shall state in an affidavit executed before the local civil registrar or any other person legally authorized to administer oaths that the marriage was performed in *articulo mortis* or that the residence of either party, specifying the *barrio* or *barangay*, is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar and that the officer took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage. (72a)

ART. 30. The original of the affidavit required in the last preceding article, together with a legible copy of the marriage contract, shall be sent by the person solemnizing the marriage to the local civil registrar of the municipality where it was performed within the period of 30 days after the performance of the marriage. (73a)

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ART. 31. A marriage in *articulo mortis* between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call. (74a)

ART. 32. A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in *articulo mortis* between persons within the zone of military operation, whether members of the armed forces or civilians. (74a)

ART. 33. Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of a marriage license, provided they are solemnized in accordance with their customs, rites or practices. (78a)

ART. 34. No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage. (76a)

CHAPTER 3 VOID AND VOIDABLE MARRIAGES

ARTICLE 35. The following marriages shall be void from the beginning:

- (1) Those contracted by any party below 18 years of age even with the consent of parents or guardians;
- (2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
- (3) Those solemnized without a license, except those covered the preceding Chapter;
- (4) Those bigamous or polygamous marriages not failing under Article 41;
- (5) Those contracted through mistake of one contracting party as to the identity of the other; and
- (6) Those subsequent marriages that are void under Article 53.

ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (n) (As amended by Executive Order No. 227 dated July 17, 1987)

ART. 37. Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

- (1) Between ascendants and descendants of any degree; and
- (2) Between brothers and sisters, whether of the full or half-blood. (81a)

ART. 38. The following marriages shall be void from the beginning for reasons of public policy:

- (1) Between collateral blood relatives, whether legitimate or illegitimate, up to the fourth civil degree;
- (2) Between stepparents and stepchildren;
- (3) Between parents-in-law and children-in-law;
- (4) Between the adopting parent and the adopted child;

- (5) Between the surviving spouse of the adopting parent and the adopted child;
- (6) Between the surviving spouse of the adopted child and the adopter;
- (7) Between an adopted child and a legitimate child of the adopter;
- (8) Between adopted children of the same adopter; and
- (9) Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse. (82)

ART. 39. The action or defense for the declaration of absolute nullity of a marriage shall not prescribe. (n) (Amended by Executive Order No. 227 dated July 17, 1987 and further amended by Republic Act No. 8533 dated February 23, 1998).

ART. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. (n)

ART. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purposes of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (83a)

ART. 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void *ab initio*.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed. (n)

ART. 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

- (1) The children of the subsequent marriage conceived prior to its termination shall be considered legitimate and their custody and support in case of dispute shall be decided by the court in a proper proceeding;
- (2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;
- (3) Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;
- (4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and
- (5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession. (n)

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ART. 44. If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void *ab initio* and all donations by reason of marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law. (n)

ART. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

- (1) That the party in whose behalf it is sought to have the marriage annulled was 18 years of age or over but below 21, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of 21, such party freely cohabited with the other and both lived together as husband and wife;
- (2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;
- (3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;
- (4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;
- (5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or
- (6) That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable. (85a)

ART. 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

- (1) Nondisclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;
- (2) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;
- (3) Concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or
- (4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage. (86a)

ART. 47. The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:

- (1) For causes mentioned in Number 1 of Article 45, by the party whose parent or guardian did not give his or her consent, within five years after attaining the age of 21, or by the parent or guardian or person having legal charge of the minor, at any time before such party reached the age of 21;
- (2) For causes mentioned in Number 2 of Article 45, by the sane spouse who had no knowledge of the other's insanity; or by any relative, or guardian or person having legal charge of the insane, at any time before the death of either party, or by the insane spouse during a lucid interval or after regaining sanity;
- (3) For causes mentioned in Number 3 of Article 45, by the injured party, within five years after the discovery of the fraud;
- (4) For causes mentioned in Number 4 of Article 45, by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;
- (5) For causes mentioned in Numbers 5 and 6 of Article 45, by the injured party, within five years after the marriage. (87a)

ART. 48. In all cases of annulment or declaration of absolute nullity of marriage, the court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In all cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment. (88a)

ART. 49. During the pendency of the action and in the absence of adequate provisions in a written agreement between the spouses, the court shall provide for the support of the spouses and the custody and support of their common children. The Court shall give paramount consideration to the moral and material welfare of said children and their choice of the parent with whom they wish to remain as provided to in Title IX. It shall also provide for appropriate visitation rights of the other parent. (n)

ART. 50. The effects provided for in paragraphs (2), (3), (4) and (5) of Article 43 and in Article 44 shall also apply in proper cases to marriages which are declared void *ab initio* or annulled by final judgment under Articles 40 and 45.

The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.

All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129. (n)

ART. 51. In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.

The children or their guardian or the trustee of their property, may ask for the enforcement of the judgment.

The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime. (n)

ART. 52. The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons. (n)

ART. 53. Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void. (n)

ART. 54. Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory, shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate. (n)

TITLE II

LEGAL SEPARATION

ARTICLE 55. A petition for legal separation may be filed on any of the following grounds:

- (1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

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- (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
- (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
- (4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
- (5) Drug addiction or habitual alcoholism of the respondent;
- (6) Lesbianism or homosexuality of the respondent;
- (7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
- (8) Sexual infidelity or perversion;
- (9) Attempt by the respondent against the life of the petitioner; or
- (10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term *child* shall include a child by nature or by adoption. (97a)

ART. 56. The petition for legal separation shall be denied on any of the following grounds:

- (1) Where the aggrieved party has condoned the offense or act complained of;
- (2) Where the aggrieved party has consented to the commission of the offense or act complained of;
- (3) Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
- (4) Where both parties have given ground for legal separation;
- (5) Where there is collusion between the parties to obtain decree of legal separation; or
- (6) Where the action is barred by prescription. (100a)

ART. 57. An action for legal separation shall be filed within five years from the time of the occurrence of the cause. (102a)

ART. 58. An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition. (103a)

ART. 59. No legal separation may be decreed unless the court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable. (n)

ART. 60. No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.

In any case, the court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. (101a)

ART. 61. After the filing of the petition for legal separation, the spouses shall be entitled to live separately from each other.

The court, in the absence of a written agreement between the spouses, shall designate either of them or a third person to administer the absolute community or conjugal partnership property. The administrator appointed by the court shall have the same powers and duties as those of a guardian under the Rules of Court. (104a)

ART. 62. During the pendency of the action for legal separation, the provisions of Article 49 shall likewise apply to the support of the spouses and the custody and support of the common children. (105a)

ART. 63. The decree of legal separation shall have the following effects:

- (1) The spouses shall be entitled to live separately from each other, but the marriage bond shall not be severed;
- (2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);
- (3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and
- (4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law. *(106a)*

ART. 64. After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.

The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation has become final. *(107a)*

ART. 65. If the spouses should reconcile, a corresponding joint manifestation under oath duly signed by them shall be filed with the court in the same proceeding for legal separation. *(n)*

ART. 66. The reconciliation referred to in the preceding article shall have the following consequences:

- (1) The legal separation proceedings, if still pending, shall thereby be terminated in whatever stage; and
- (2) The final decree of legal separation shall be set aside, but the separation of property and any forfeiture of the share of the guilty spouse already effected shall subsist, unless the spouses agree to revive their former property regime.

The court's order containing the foregoing shall be recorded in the proper civil registries. *(108a)*

ART. 67. The agreement to revive the former property regime referred to in the preceding article shall be executed under oath and shall specify:

- (1) The properties to be contributed anew to the restored regime;
- (2) Those to be retained as separate properties of each spouse; and
- (3) The names of all their known creditors, their addresses and the amounts owing to each.

The agreement of revival and the motion for its approval shall be filed with the court in the same proceeding for legal separation, with copies of both furnished to the creditors named therein. After due hearing, the court shall, in its order, take measures to protect the interest of creditors and such order shall be recorded in the proper registries of property.

The recording of the order in the registries of property shall not prejudice any creditor not listed or not notified, unless the debtor-spouse has sufficient separate properties to satisfy the creditor's claim. *(195a, 108a)*

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TITLE III

RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE

ARTICLE 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support. *(109a)*

ART. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family. *(110a)*

ART. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties. *(111a)*

ART. 71. The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70. *(115a)*

ART. 72. When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief. *(116a)*

ART. 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

In case of disagreement, the court shall decide whether or not:

- (1) The objection is proper; and
- (2) Benefit has accrued to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith. *(117a)*

TITLE IV

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 74. The property relations between husband and wife shall be governed in the following order:

- (1) By marriage settlements executed before the marriage;
- (2) By the provisions of this Code; and
- (3) By the local customs. *(118)*

ART. 75. The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern. *(119a)*

ART. 76. In order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage, subject to the provisions of Articles 66, 67, 128, 135 and 136. *(121)*

ART. 77. The marriage settlements and any modification thereof shall be in writing, signed by the parties and executed before the celebration of the marriage. They shall not prejudice third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of property. *(122a)*

ART. 78. A minor who according to law may contract marriage may also execute his or her marriage settlements, but they shall be valid only if the persons designated in Article 14 to give consent to the marriage are made parties to the agreement, subject to the provisions of Title IX of this Code. *(120a)*

ART. 79. For the validity of any marriage settlements executed by a person upon whom a sentence of civil interdiction has been pronounced or who is subject to any other disability, it shall be indispensable for the guardian appointed by a competent court to be made a party thereto. *(123a)*

ART. 80. In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence.

This rule shall not apply:

- (1) Where both spouses are aliens;
- (2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and
- (3) With respect to the extrinsic validity of contracts entered into the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity. *(124a)*

ART. 81. Everything stipulated in the settlements or contracts referred to in the preceding articles in consideration of a future marriage, including donations between the prospective spouses made therein, shall be rendered void if the marriage does not take place. However, stipulations that do not depend upon the celebration of the marriages shall be valid. *(125a)*

CHAPTER 2

DONATIONS BY REASON OF MARRIAGE

ARTICLE 82. Donations by reason of marriage are those which are made before its celebration, in consideration of the same, and in favor of one or both of the future spouses. *(126)*

ART. 83. These donations are governed by the rules on ordinary donations established in Title III of Book III of the Civil Code, insofar as they are not modified by the following Articles. *(127a)*

ART. 84. If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void.

Donations of future property shall be governed by the provisions on testamentary succession and the formalities of wills. *(130a)*

ART. 85. Donations by reason of marriage of property subject to encumbrances shall be valid. In case of foreclosure of the encumbrance and the property is sold for less than the total amount of the obligation secured, the donee shall not be liable for the deficiency. If the property is sold for more than the total amount of said obligation, the donee shall be entitled to the excess. *(131a)*

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ART. 86. A donation by reason of marriage may be revoked by the donor in the following cases:

- (1) If the marriage is not celebrated or judicially declared void *ab initio* except donations made in the marriage settlements, which shall be governed by Article 81;
- (2) When the marriage takes place without the consent of the parents or guardian, as required by law;
- (3) When the marriage is annulled, and the donee acted in bad faith;
- (4) Upon legal separation, the donee being the guilty spouse;
- (5) If it is with a resolutive condition and the condition is complied with;
- (6) When the donee has committed an act of ingratitude as specified by the provisions of the Civil Code on donations in general. (132a)

ART. 87. Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage. (133a)

CHAPTER 3 SYSTEM OF ABSOLUTE COMMUNITY

SECTION 1. General Provisions.

ARTICLE 88. The absolute community of property between spouses shall commence at the precise moment that the marriage is celebrated. Any stipulation, express or implied, for the commencement of the community regime at any other time shall be void. (145a)

ART. 89. No waiver of rights, interests, shares and effects of the absolute community of property during the marriage can be made except in case of judicial separation of property.

When the waiver takes place upon a judicial separation of property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded as provided in Article 77. The creditors of the spouse who made such waiver may petition the court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits. (146a)

ART. 90. The provisions on co-ownership shall apply to the absolute community of property between the spouses in all matters not provided for in this Chapter. (n)

SEC. 2. What Constitutes Community Property.

ARTICLE 91. Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter. (197a)

ART. 92. The following shall be excluded from the community property:

- (1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;
- (2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;
- (3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property. (201a)

ART. 93. Property acquired during the marriage is presumed to belong to the community, unless it is proved that it is one of those excluded therefrom. *(160a)*

SEC. 3. Charges Upon and Obligations of the Absolute Community.

ARTICLE 94. The absolute community of property shall be liable for:

- (1) The support of the spouses, their common children and legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
- (2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the community, or by both spouses, or by one spouse with the consent of the other;
- (3) Debts and obligations contracted by either spouses without the consent of the other to the extent that the family may have been benefited;
- (4) All taxes, liens, charges and expenses, including major or minor repairs, upon the community property;
- (5) All taxes and expenses for mere preservation made during marriage upon the separate property of either spouse used by the family;
- (6) Expenses to enable either spouse to commence or complete a professional or vocational course, or other activity for self-improvement;
- (7) Antenuptial debts of either spouse insofar as they have redounded to the benefit of the family;
- (8) The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement;
- (9) Antenuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community; and
- (10) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the community property is insufficient to cover the foregoing liabilities, except those falling under paragraph (9), the spouses shall be solidarily liable for the unpaid balance with their separate properties. *(161a, 162a, 163a, 202a-205a)*

ART. 95. Whatever may be lost during the marriage in any game of chance, betting, sweepstakes, or any other kind of gambling, whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the community but any winnings therefrom shall form part of the community property. *(164a)*

SEC. 4. Ownership, Administration, Enjoyment and Disposition of the Community Property.

ARTICLE 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. *(206a)*

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ART. 97. Either spouse may dispose by will of his or her interest in the community property. *(n)*

ART. 98. Neither spouse may donate any community property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress. *(n)*

SEC. 5. Dissolution of Absolute Community Regime.

ARTICLE 99. The absolute community terminates:

- (1) Upon the death of either spouse;
- (2) When there is a decree of legal separation;
- (3) When the marriage is annulled or declared void; or
- (4) In case of judicial separation of property during the marriage under Articles 134 to 138. *(175a)*

ART. 100. The separation in fact between husband and wife shall not affect the regime of absolute community except that:

- (1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;
- (2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;
- (3) In the absence of sufficient community property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share. *(178a)*

ART. 101. If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the absolute community, subject to such precautionary conditions as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be *prima facie* presumed to have no intention of returning to the conjugal dwelling. *(178a)*

SEC. 6. Liquidation of the Absolute Community Assets and Liabilities.

ARTICLE 102. Upon dissolution of the absolute community regime, the following procedure shall apply:

- (1) An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive properties of each spouse.
- (2) The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.
- (3) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
- (4) The net remainder of the properties of the absolute community shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the

marriage settlements, or unless there has been a voluntary waiver of such share as provided in this Code. For purposes of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.

- (5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.
- (6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children. *(n)*

ART. 103. Upon the termination of the marriage by death, the community property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the community property either judicially or extrajudicially within one year from the death of the deceased spouse. If upon the lapse of the said period, no liquidation is made, any disposition or encumbrance involving the community property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. *(n)*

ART. 104. Whenever the liquidation of the community properties of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each community shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which community the existing properties belong, the same shall be divided between or among the different communities in proportion to the capital and duration of each. *(189a)*

CHAPTER 4 CONJUGAL PARTNERSHIP OF GAINS

SECTION 1. General Provisions.

ARTICLE 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application. *(n)*

The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between the spouses before the effectivity of this Code without prejudice to vested rights already acquired in accordance with the Civil Code or other laws as provided in Article 256. *(n)*

ART. 106. Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements. *(142a)*

ART. 107. The rules provided in Articles 88 and 89 shall also apply to conjugal partnership of gains. *(n)*

ART. 108. The conjugal partnership shall be governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements. *(147a)*

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SEC. 2. Exclusive Property of Each Spouse.

ART. 109. The following shall be the exclusive property of each spouse:

- (1) That which is brought to the marriage as his or her own;
- (2) That which each acquires during the marriage by gratuitous title;
- (3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and
- (4) That which is purchased with exclusive money of the wife or of the husband. *(148a)*

ART. 110. The spouses retain the ownership, possession, administration and enjoyment of their exclusive properties.

Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place the property is located. *(137a, 168a, 169a)*

ART. 111. A spouse of age may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same. *(n)*

ART. 112. The alienation of any exclusive property of a spouse administered by the other automatically terminates the administration over such property and the proceeds of the alienation shall be turned over to the owner-spouse. *(n)*

ART. 113. Property donated or left by will to the spouses, jointly and with designation of determinate shares, shall pertain to the donee-spouse as his or her own exclusive property, and in the absence of designation, share and share alike, without prejudice to the right of accretion when proper. *(150a)*

ART. 114. If the donations are onerous, the amount of the charges shall be borne by the exclusive property of the donee-spouse, whenever they have been advanced by the conjugal partnership of gains. *(151a)*

ART. 115. Retirement benefits, pensions, annuities, gratuities, usufructs and similar benefits shall be governed by the rules on gratuitous or onerous acquisitions as may be proper in each case. *(n)*

SEC. 3. Conjugal Partnership Property.

ARTICLE 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved. *(160a)*

ART. 117. The following are conjugal partnership properties:

- (1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
- (2) Those obtained from the labor, industry, work or profession of either or both of the spouses;
- (3) The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;
- (4) The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;
- (5) Those acquired through occupation such as fishing or hunting;
- (6) Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and

(7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse. *(153a, 154, 155, 159)*

ART. 118. Property bought on installments paid partly from exclusive funds of either or both spouses and partly from conjugal funds belongs to the buyer or buyers if full ownership was vested before the marriage and to the conjugal partnership if such ownership was vested during the marriage. In either case, any amount advanced by the partnership or by either or both spouses shall be reimbursed by the owner or owners upon liquidation of the partnership. *(n)*

ART. 119. Whenever an amount or credit payable within a period of time belongs to one of the spouses, the sums which may be collected during the marriage in partial payments or by installments on the principal shall be the exclusive property of the spouse. However, interests falling due during the marriage on the principal shall belong to the conjugal partnership. *(156a, 157a)*

ART. 120. The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership. *(158a)*

SEC. 4. Charges Upon and Obligations of the Conjugal Partnership.

ARTICLE 121. The conjugal partnership shall be liable for:

- (1) The support of the spouses, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
- (2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;
- (3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;
- (4) All taxes, liens, charges, and expenses, including major or minor repairs upon the conjugal partnership property;
- (5) All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;
- (6) Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for self-improvement;
- (7) Ante nuptial debts of either spouse insofar as they have redounded to the benefit of the family;
- (8) The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement; and
- (9) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties. *(161a)*

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ART. 122. The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purposes abovementioned. *(163a)*

ART. 123. Whatever may be lost during the marriage in any game of chance, or in betting, sweepstakes, or any other kind of gambling whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the conjugal partnership but any winnings therefrom shall form part of the conjugal partnership property. *(164a)*

SEC. 5. Administration of the Conjugal Partnership Property.

ARTICLE 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. *(165a)*

ART. 125. Neither spouse may donate any conjugal partnership property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the conjugal partnership property for charity or on occasions of family rejoicing or family in distress. *(174a)*

SEC. 6. Dissolution of Conjugal Partnership Regime.

ARTICLE 126. The conjugal partnership terminates:

- (1) Upon the death of either spouse;
- (2) When there is a decree of legal separation;
- (3) When the marriage is annulled or declared void; or
- (4) In case of judicial separation of property during the marriage under Articles 134 to 138. *(175a)*

ART. 127. The separation in fact between husband and wife shall not affect the regime of conjugal partnership, except that:

- (1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;
- (2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;
- (3) In the absence of sufficient conjugal partnership property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon petition in a summary proceeding,

be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share. (178a)

ART. 128. If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property, or for authority to be the sole administrator of the conjugal partnership property, subject to such precautionary conditions as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be *prima facie* presumed to have no intention of returning to the conjugal dwelling. (167a, 191a)

SEC. 7. Liquidation of the Conjugal Partnership Assets and Liabilities.

ARTICLE 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

- (1) An inventory shall be prepared, listing separately all the properties of the conjugal partnership and the exclusive properties of each spouse.
- (2) Amounts advanced by the conjugal partnership in payment of personal debts and obligations of either spouse shall be credited to the conjugal partnership as an asset thereof.
- (3) Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the conjugal partnership.
- (4) The debts and obligations of the conjugal partnership shall be paid out of the conjugal assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of paragraph (2) of Article 121.
- (5) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
- (6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family, belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the conjugal funds, if any.
- (7) The net remainder of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.
- (8) The presumptive legitimes of the common children shall be delivered upon partition in accordance with Article 51.
- (9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children. (181a, 182a, 183a, 184a, 185a)

ART. 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extrajudicially within one year from the death of the deceased spouse. If upon the

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lapse of the one-year period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. *(n)*

ART. 131. Whenever the liquidation of the conjugal partnership properties of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each partnership shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which partnership the existing properties belong, the same shall be divided between and among the different partnerships in proportion to the capital and duration of each. *(189a)*

ART. 132. The Rules of Court on the administration of estates of deceased persons shall be observed in the appraisal and sale of property of the conjugal partnership, and other matters which are not expressly determined in this Chapter. *(187a)*

ART. 133. From the common mass of property support shall be given to the surviving spouse and to the children during the liquidation of the inventoried property and until what belongs to them is delivered; but from this shall be deducted that amount received for support which exceeds the fruits or rents pertaining to them. *(188a)*

CHAPTER 5

SEPARATION OF PROPERTY OF THE SPOUSE AND ADMINISTRATION OF COMMON PROPERTY BY ONE SPOUSE DURING THE MARRIAGE

ARTICLE 134. In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place except by judicial order. Such judicial separation of property may either be voluntary or for sufficient cause. *(190a)*

ART. 135. Any of the following shall be considered sufficient cause for judicial separation of property:

- (1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;
- (2) That the spouse of the petitioner has been judicially declared an absentee;
- (3) That loss of parental authority of the spouse of petitioner has been decreed by the court;
- (4) That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;
- (5) That the spouse granted the power of administration in the marriage settlements has abused that power; and
- (6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

In the cases provided for in numbers (1), (2) and (3), the presentation of the final judgment against the guilty or absent spouse shall be enough basis for the grant of the decree of judicial separation of property. *(191a)*

ART. 136. The spouses may jointly file a verified petition with the court for the voluntary dissolution of the absolute community or the conjugal partnership of gains, and for the separation of their common properties.

All creditors of the absolute community or of the conjugal partnership of gains, as well as the personal creditors of the spouse, shall be listed in the petition and notified of the filing thereof. The court shall take measures to protect the creditors and other persons with pecuniary interest. *(191a)*

ART. 137. Once the separation of property has been decreed, the absolute community or the conjugal partnership of gains shall be liquidated in conformity with this Code.

During the pendency of the proceedings for separation of property, the absolute community or the conjugal partnership shall pay for the support of the spouses and their children. *(192a)*

ART. 138. After dissolution of the absolute community or of the conjugal partnership, the provisions on complete separation of property shall apply. *(191a)*

ART. 139. The petition for separation of property and the final judgment granting the same shall be recorded in the proper local civil registries and registries of property. *(193a)*

ART. 140. The separation of property shall not prejudice the rights previously acquired by creditors. *(194a)*

ART. 141. The spouses may, in the same proceedings where separation of property was decreed, file a motion in court for a decree reviving the property regime that existed between them before the separation of property in any of the following instances:

- (1) When the civil interdiction terminates;
- (2) When the absentee spouse reappears;
- (3) When the court, being satisfied that the spouse granted the power of administration in the marriage settlements will not again abuse that power, authorizes the resumption of said administration;
- (4) When the spouse who has left the conjugal home without a decree of legal separation resumes common life with the other;
- (5) When the parental authority is judicially restored to the spouse previously deprived thereof;
- (6) When the spouses who have separated in fact for at least one year, reconcile and resume common life; or
- (7) When after voluntary dissolution of the absolute community of property or conjugal partnership has been judicially decreed upon the joint petition of the spouses, they agree to the revival of the former property regime. No voluntary separation of property may thereafter be granted.

The revival of the former property regime shall be governed by Article 67. *(195a)*

ART. 142. The administration of all classes of exclusive property of either spouse may be transferred by the court to the other spouse:

- (1) When one spouse becomes the guardian of the other;
- (2) When one spouse is judicially declared an absentee;
- (3) When one spouse is sentenced to a penalty which carries with it civil interdiction; or
- (4) When one spouse becomes a fugitive from justice or is in hiding as an accused in a criminal case.

If the other spouse is not qualified by reason of incompetence, conflict of interest, or any other just cause, the court shall appoint a suitable person to be the administrator. *(n)*

CHAPTER 6 REGIME OF SEPARATION OF PROPERTY

ARTICLE 143. Should the future spouses agree in the marriage settlements that their property relations during marriage shall be governed by the regime of separation of property, the provisions of this Chapter shall be supplementary. *(212a)*

ART. 144. Separation of property may refer to present or future property or both. It may be total or partial. In the latter case, the property not agreed upon as separate shall pertain to the absolute community. *(213a)*

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ART. 145. Each spouse shall own, dispose of, possess, administer and enjoy his or her own separate estate, without need of the consent of the other. To each spouse shall belong all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property. (214a)

ART. 146. Both spouses shall bear the family expenses in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties.

The liability of the spouses to creditors for family expenses shall, however, be solidary. (215a)

CHAPTER 7

PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE

ARTICLE 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation. (144a)

ART. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith. (144a)

TITLE V

THE FAMILY

CHAPTER 1

THE FAMILY AS AN INSTITUTION

ARTICLE 149. The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect. *(216a, 218a)*

ART. 150. Family relations include those:

- (1) Between husband and wife;
- (2) Between parents and children;
- (3) Among other ascendants and descendants; and
- (4) Among brothers and sisters, whether of the full or half-blood. *(217a)*

ART. 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the same case must be dismissed.

This Rule shall not apply to cases which may not be the subject of compromise under the Civil Code. *(222a)*

CHAPTER 2

THE FAMILY HOME

ARTICLE 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of the family, is the dwelling house where they and their family reside, and the land on which it is situated. *(223a)*

ART. 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law. *(223a)*

ART. 154. The beneficiaries of a family home are:

- (1) The husband and wife, or an unmarried person who is the head of a family; and
- (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support. *(226a)*

ART. 155. The family home shall be exempt from execution, forced sale or attachment except:

- (1) For nonpayment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by mortgages on the premises before or after such constitution; and
- (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building. *(243a)*

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ART. 156. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property.

Nevertheless, property that is the subject of a conditional sale on installment where ownership is reserved by the vendor only to guarantee payment of the purchase price may be constituted as a family home. *(227a, 228a)*

ART. 157. The actual value of the family home shall not exceed, at the time of its constitution, the amount of Three Hundred Thousand Pesos (P300,000) in urban areas, and Two Hundred Thousand Pesos (P200,000) in rural areas, or such amounts as may hereafter be fixed by law.

In any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of the evaluation.

For purposes of this Article, urban areas are deemed to include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed to be rural areas. *(231a)*

ART. 158. The family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse, and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide. *(235a)*

ART. 159. The family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of 10 years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This Rule shall apply regardless of whoever owns the property or constituted the family home. *(238a)*

ART. 160. When a creditor whose claims is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum allowed in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

At the execution sale, no bid below the value allowed for a family home shall be considered. The proceeds shall be applied first to the amount mentioned in Article 157, and then to the liabilities under the judgment and the costs. The excess, if any, shall be delivered to the judgment debtor. *(247a, 248a)*

ART. 161. For purposes of availing of the benefits of a family home as provided for in this Chapter, a person may constitute, or be the beneficiary of, only one family home. *(n)*

ART. 162. The provisions in this Chapter shall also govern existing family residences insofar as said provisions are applicable. *(n)*

TITLE VI
PATERNITY AND FILIATION

CHAPTER 1
LEGITIMATE CHILDREN

ARTICLE 163. The filiation of children may be by nature or by adoption. Natural filiation may be legitimate or illegitimate. *(n)*

ART. 164. Children conceived or born during the marriage of the parents are legitimate.

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child. *(255a, 258a)*

ART. 165. Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code. *(n)*

ART. 166. Legitimacy of a child may be impugned only on the following grounds:

- (1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:
 - (a) the physical incapacity of the husband to have sexual intercourse with his wife;
 - (b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible;
 - (c) serious illness of the husband, which absolutely prevented sexual intercourse;
- (2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or
- (3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence. *(255a)*

ART. 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress. *(256a)*

ART. 168. If the marriage is terminated and the mother contracted another marriage within 300 days after such termination of the former marriage, these Rules shall govern in the absence of proof to the contrary:

- (1) A child born before 180 days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within 300 days after the termination of the former marriage;
- (2) A child born after 180 days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the 300 days after the termination of the former marriage. *(259a)*

ART. 169. The legitimacy or illegitimacy of a child born after 300 days following the termination of the marriage shall be proved by whoever alleges such legitimacy or illegitimacy. *(261a)*

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

ART. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

ART. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing his action;
- (2) If he should die after the filing of the complaint without having desisted therefrom; or
- (3) If the child was born after the death of the husband. *(262a)*

CHAPTER 2 PROOF OF FILIATION

ARTICLE 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws. *(265a, 266a, 267a)*

ART. 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

The action already commenced by the child shall survive notwithstanding the death of either or both of the parties. *(268a)*

ART. 174. Legitimate children shall have the right:

- (1) To bear the surname of the father and the mother, in conformity with the provisions of the Civil Code on Surnames;
- (2) To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support; and
- (3) To be entitled to the legitimate and other successional rights granted to them by the Civil Code. *(264a)*

CHAPTER 3 ILLEGITIMATE CHILDREN

ARTICLE 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent. (289a)

ART. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children shall use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register or when an admission in a public document or private handwritten instrument is made by the father: *Provided*, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each legitimate child shall consist of one-half of the legitime of a legitimate child. (As amended by RA No. 9255)

CHAPTER 4 LEGITIMATED CHILDREN

ARTICLE 177. Children conceived and born outside of wedlock of parents who, at the time of conception of the former, were not disqualified by any impediment to marry each other or were so disqualified only because either or both of them were below 18 years of age, may be legitimated. (as amended by RA No. 9858)

ART. 178. Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation. (270a)

ART. 179. Legitimated children shall enjoy the same rights as legitimate children. (272a)

ART. 180. The effects of legitimation shall retroact to the time of the child's birth. (273a)

ART. 181. The legitimation of children who died before the celebration of the marriage shall benefit their descendants. (274a)

ART. 182. Legitimation may be impugned only by those who are prejudiced in their rights, within five years from the time their cause of action accrues. (275a)

TITLE VII

ADOPTION

(Republic Act Numbered 8552. The provisions on adoption contained from Articles 183 to 193 of the Family Code have been repealed and replaced by Republic Act Numbered 8552 approved by President Fidel V. Ramos on February 25, 1998. The said law is entitled "An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes")

Note: Please see pp. ____ for the full text of Domestic Adoption Act of 1998 (Republic Act No. 8552).

TITLE VIII

SUPPORT

ARTICLE 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. (290a)

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

ART. 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

- (1) The spouses;
- (2) Legitimate ascendants and descendants;
- (3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- (4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
- (5) Legitimate brothers and sisters, whether of full or half-blood. *(291a)*

ART. 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence. *(291a)*

ART. 197. For the support of legitimate ascendants; descendants, whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouse obliged upon the liquidation of the absolute community or of the conjugal partnership. *(n)*

ART. 198. During the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage, the spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership. After final judgment granting the petition, the obligation of mutual support between the spouses ceases. However, in case of legal separation, the court may order that the guilty spouse shall give support to the innocent one, specifying the terms of such order. *(292a)*

ART. 199. Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

- (1) The spouse;
- (2) The descendants in the nearest degree;
- (3) The ascendants in the nearest degree; and
- (4) The brothers and sisters. *(294a)*

ART. 200. When the obligation to give support falls upon two or more persons, the payment of the same shall be divided between them in proportion to the resources of each.

However, in case of urgent need and by special circumstances, the judge may order only one of them to furnish the support provisionally, without prejudice to his right to claim from the other obligors the share due from them.

When two or more recipients at the same time claim support from one and the same person legally obliged to give it, should the latter not have sufficient means to satisfy all claims, the order established in the preceding article shall be followed, unless the concurrent obligees should be the spouse and a child subject to parental authority, in which case the child shall be preferred. *(295a)*

ART. 201. The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient. *(296a)*

ART. 202. Support in the cases referred to in the preceding article shall be reduced or increased proportionately, according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to furnish the same. *(297a)*

ART. 203. The obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand.

Support *pendente lite* may be claimed in accordance with the Rules of Court.

Payment shall be made within the first five days of each corresponding month. When the recipient dies, his heirs shall not be obliged to return what he has received in advance. (298a)

ART. 204. The person obliged to give support shall have the option to fulfill the obligation either by paying the allowance fixed, or by receiving and maintaining in the family dwelling the person who has a right to receive support. The latter alternative cannot be availed of in case there is a moral or legal obstacle thereto. (299a)

ART. 205. The right to receive support under this Title as well as any money or property obtained as such support shall not be levied upon on attachment or execution. (302a)

ART. 206. When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it without intention of being reimbursed. (2164a)

ART. 207. When the person obliged to support another unjustly refuses or fails to give support when urgently needed by the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. This Article shall particularly apply when the father or mother of a child under the age of majority unjustly refuses to support or fails to give support to the child when urgently needed. (2166a)

ART. 208. In case of contractual support or that given by will, the excess in amount beyond that required for legal support shall be subject to levy on attachment or execution.

Furthermore, contractual support shall be subject to adjustment whenever modification is necessary due to changes of circumstances manifestly beyond the contemplation of the parties. (n)

TITLE IX

PARENTAL AUTHORITY

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing of such children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being. (n)

ART. 210. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law. (313a)

ART. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority. (172, PD No. 603)

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

ART. 212. In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children. *(172, PD No. 603)*

ART. 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit. *(n)*

No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.

ART. 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority. *(355a)*

ART. 215. No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other. *(315a)*

CHAPTER 2

SUBSTITUTE AND SPECIAL PARENTAL AUTHORITY

ARTICLE 216. In default of parents or a judicially appointed guardian, the following persons shall exercise substitute parental authority over the child in the order indicated:

- (1) The surviving grandparent, as provided in Article 214;
- (2) The oldest brother or sister, over 21 years of age, unless unfit or disqualified; and
- (3) The child's actual custodian, over 21 years of age, unless unfit or disqualified.

Whenever the appointment of a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed. *(349a, 351a, 354a)*

ART. 217. In case of foundlings, abandoned neglected or abused children and other children similarly situated, parental authority shall be entrusted in summary judicial proceedings to heads of children's homes, orphanages and similar institutions duly accredited by the proper government agency. *(314a)*

ART. 218. The school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution. *(349a)*

ART. 219. Those given the authority and responsibility under the preceding Article shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. The parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable.

The respective liabilities of those referred to in the preceding paragraph shall not apply if it is proved that they exercised the proper diligence required under the particular circumstances.

All other cases not covered by this and the preceding articles shall be governed by the provisions of the Civil Code on quasi-delicts. *(n)*

CHAPTER 3
EFFECT OF PARENTAL AUTHORITY UPON THE PERSONS OF THE CHILDREN

ARTICLE 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:

- (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
- (2) To give them love and affection, advice and counsel, companionship and understanding;
- (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
- (4) To enhance, protect, preserve and maintain their physical and mental health at all times;
- (5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
- (6) To represent them in all matters affecting their interests;
- (7) To demand from them respect and obedience;
- (8) To impose discipline on them as may be required under the circumstances; and
- (9) To perform such other duties as are imposed by law upon parents and guardians. (316a)

ART. 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law. (2180[2]a and [4]a)

ART. 222. The courts may appoint a guardian of the child's property or a guardian *ad litem* when the best interests of the child so require. (317)

ART. 223. The parents or, in their absence or incapacity, the individual, entity or institution exercising parental authority, may petition the proper court of the place where the child resides, for an order providing for disciplinary measures over the child. The child shall be entitled to the assistance of counsel, either of his choice or appointed by the court, and a summary hearing shall be conducted wherein the petitioner and the child shall be heard.

However, if in the same proceeding the court finds the petitioner at fault, irrespective of the merits of the petition, or when the circumstances so warrant, the court may also order the deprivation or suspension of parental authority or adopt such other measures as it may deem just and proper. (318a)

ART. 224. The measures referred to in the preceding article may include the commitment of the child for not more than 30 days in entities or institutions engaged in child care or in children's homes duly accredited by the proper government agency.

The parent exercising parental authority shall not interfere with the care of the child whenever committed but shall provide for his support. Upon proper petition or at its own instance, the court may terminate the commitment of the child whenever just and proper. (319a)

CHAPTER 4

EFFECT OF PARENTAL AUTHORITY UPON THE PROPERTY OF THE CHILDREN

ART. 225. The father and the mother shall, jointly exercise legal guardianship over the property of their unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds Fifty Thousand Pesos (P50,000), the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than 10 *per centum* of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply. (320a)

ART. 226. The property of the unemancipated child earned or acquired with his work or industry or by onerous or gratuitous title shall belong to the child in ownership and shall be devoted exclusively to the latter's support and education, unless the title or transfer provides otherwise.

The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family. (321a, 323a)

ART. 227. If the parents entrust the management or administration of any of their properties to an unemancipated child, the net proceeds of such property shall belong to the owner. The child shall be given a reasonable monthly allowance in an amount not less than that which the owner would have paid if the administrator were a stranger, unless the owner grants the entire proceeds to the child. In any case, the proceeds thus give in whole or in part shall not be charged to the child's legitime. (322a)

CHAPTER 5

SUSPENSION OR TERMINATION OF PARENTAL AUTHORITY

ARTICLE 228. Parental authority terminates permanently:

- (1) Upon the death of the parents;
- (2) Upon the death of the child; or
- (3) Upon emancipation of the child. (327a)

ART. 229. Unless subsequently revived by a final judgment, parental authority also terminates:

- (1) Upon adoption of the child;
- (2) Upon appointment of a general guardian;
- (3) Upon judicial declaration of abandonment of the child in a case filed for the purpose;
- (4) Upon final judgment of a competent court divesting the party concerned of parental authority; or
- (5) Upon judicial declaration of absence or incapacity of the person exercising parental authority. (327a)

ART. 230. Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender. *(330a)*

ART. 231. The court in an action filed for the purpose in a related case may also suspend parental authority if the parent or the person exercising the same:

- (1) Treats the child with excessive harshness or cruelty;
- (2) Gives the child corrupting orders, counsel or example;
- (3) Compels the child to beg; or
- (4) Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances.

The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefor has ceased and will not be repeated. *(332a)*

ART. 232. If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority. *(n)*

ART. 233. The person exercising substitute parental authority shall have the same authority over the person of the child as the parents.

In no case shall the school administrator, teacher of individual engaged in child care and exercising special parental authority, inflict corporal punishment upon the child. *(n)*

TITLE X

EMANCIPATION AND AGE OF MAJORITY

ARTICLE 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of 18 years. *(As amended by RA No. 6809)*

ART. 235. *(Repealed by RA No. 6809)*

ART. 236. Emancipation for any cases shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exceptions established by existing laws in special cases.

Contracting marriage shall require parental consent until the age of 21.

Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and wards below 21 years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code. *(As amended by RA No. 6809)*

ART. 237. *(Repealed by RA No. 6809)*

TITLE XI

SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW

CHAPTER 1

SCOPE OF APPLICATION

ARTICLE 238. Until modified by the Supreme Court, the procedural rules provided for in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner, without regard to technical rules. *(n)*

CHAPTER 2

SEPARATION IN FACT BETWEEN HUSBAND AND WIFE

ARTICLE 239. When a husband and wife are separated in fact, or one has abandoned the other and one of them seeks judicial authorization for a transaction where the consent of the other spouse is required by law but such consent is withheld or cannot be obtained, a verified petition may be filed in court alleging the foregoing facts.

The petition shall attach the proposed deed, if any, embodying the transaction, and, if none shall describe in detail the said transaction and state the reason why the required consent thereto cannot be secured. In any case, the final deed duly executed by the parties shall be submitted to and approved by the court. *(n)*

ART. 240. Claims for damages by either spouse, except costs of the proceedings, may be litigated only in a separate action. *(n)*

ART. 241. Jurisdiction over the petition shall, upon proof of notice to the other spouse, be exercised by the proper court authorized to hear family cases, if one exists, or in the regional trial court or its equivalent sitting in the place where either of the spouses resides. *(n)*

ART. 242. Upon the filing of the petition, the court shall notify the other spouse, whose consent to the transaction is required, of said petition, ordering said spouse to show cause why the petition should not be granted, on or before the date set in said notice for the initial conference. The notice shall be accompanied by a copy of the petition and shall be served at the last known address of the spouse concerned. *(n)*

ART. 243. A preliminary conference shall be conducted by the judge personally without the parties being assisted by counsel. After the initial conference, if the court deems it useful, the parties may be assisted by counsel at the succeeding conferences and hearings. *(n)*

ART. 244. In case of non-appearance of the spouse whose consent is sought, the court shall inquire into the reasons for his failure to appear, and shall require such appearance, if possible. *(n)*

ART. 245. If, despite all efforts, the attendance of the non-consenting spouse is not secured, the court may proceed *ex parte* and render judgment as the facts and circumstances may warrant. In any case, the judge shall endeavor to protect the interests of the non-appearing spouse. *(n)*

ART. 246. If the petition is not resolved at the initial conference, said petition shall be decided in a summary hearing on the basis of affidavits, documentary evidence or oral testimonies at the sound discretion of the court. If testimony is needed, the court shall specify the witnesses to be heard and the subject-matter of their testimonies, directing the parties to present said witnesses. *(n)*

ART. 247. The judgment of the court shall be immediately final and executory. *(n)*

ART. 248. The petition for judicial authority to administer or encumber specific separate property of the abandoning spouse and to use the fruits or proceeds thereof for the support of the family shall also be governed by these rules. *(n)*

CHAPTER 3
INCIDENTS INVOLVING PARENTAL AUTHORITY

ARTICLE 249. Petitions filed under Articles 223, 225 and 235 of this Code involving parental authority shall be verified. *(n)*

ART. 250. Such petitions shall be filed in the proper court of the place where the child resides. *(n)*

ART. 251. Upon the filing of the petition, the court shall notify the parents or, in their absence or incapacity, the individuals, entities or institutions exercising parental authority over the child. *(n)*

ART. 252. The rules in Chapter 2 hereof shall also govern summary proceedings under this Chapter insofar as they are applicable. *(n)*

CHAPTER 4
OTHER MATTERS SUBJECT TO SUMMARY PROCEEDINGS

ARTICLE 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable.

TITLE XII
FINAL PROVISIONS

ARTICLE 254. Titles III, IV, V, VI, VII, VIII, IX, XI, and XV of Book 1 of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, as amended, and Articles 17, 18, 19, 27, 28, 29, 30, 31, 39, 40, 41, and 42 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended, and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed. *(n)*

ART. 255. If any provision of this Code is held invalid, all the other provisions not affected thereby shall remain valid. *(n)*

ART. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws. *(n)*

ART. 257. This Code shall take effect one year after the completion of its publication in a newspaper of general circulation, as certified by the Executive Secretary, Office of the President.

Publication shall likewise be made in the Official Gazette. *(n)*

REPUBLIC ACT No. 6955

AN ACT TO DECLARE UNLAWFUL THE PRACTICE OF MATCHING FILIPINO WOMEN FOR MARRIAGE TO FOREIGN NATIONALS ON A MAIL-ORDER BASIS AND OTHER SIMILAR PRACTICES, INCLUDING THE ADVERTISEMENT, PUBLICATION, PRINTING OR DISTRIBUTION OF BROCHURES, FLIERS AND OTHER PROPAGANDA MATERIALS IN FURTHERANCE THEREOF AND PROVIDING PENALTY THEREFOR

Approved on June 13, 1990

SECTION 1. It is the policy of the state to ensure and guarantee the enjoyment of the people of a decent standard of living. Towards this end, the State shall take measures to protect Filipino women from being exploited in utter disregard of human dignity in their pursuit of economic upliftment.

SEC. 2. Pursuant thereto it is hereby declared unlawful:

- (a) For a person, natural or juridical, association, club or any other entity to commit, directly or indirectly, any of the following acts:
 - (1) To establish or carry on a business which has for its purpose the matching of Filipino women for marriage to foreign nationals either on a mail-order basis or through personal introduction;
 - (2) To advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier or any propaganda material calculated to promote the prohibited acts in the preceding subparagraph;
 - (3) To solicit, enlist or in any manner attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals either on a mail-order basis or through personal introduction for a fee;
 - (4) To use the postal service to promote the prohibited acts in subparagraph 1 hereof.
- (b) For the manager or officer-in-charge or advertising manager of any newspaper, magazine, television or radio station, or other media, or of an advertising agency, printing company or other similar entities, to knowingly allow, or consent to, the acts prohibited in the preceding paragraph.

SEC. 3. In case of violation of this Act by an association, club, partnership, corporation or any other entity, the incumbent officers thereof who have knowingly participated in the violation of this Act shall be held liable.

SEC. 4. Any person found guilty by the court to have violated any of the acts herein prohibited shall suffer an imprisonment of not less than six years and one day but not more than eight years and a fine of not less than Eight Thousand Pesos (P8,000) but not more than Twenty Thousand Pesos (P20,000): *Provided*, That if the offender is a foreigner, he shall be immediately deported and barred forever from entering the country after serving his sentence and payment of fine.

SEC. 5. Nothing in this Act shall be interpreted as a restriction on the freedom of speech and of association for purposes not contrary to law as guaranteed by the Constitution.

SEC. 6. All laws, decrees, orders, instructions, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 7. This Act shall take effect upon its publication for two consecutive weeks in a newspaper of general circulation.

REPUBLIC ACT No. 7610
AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE,
EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION,
AND FOR OTHER PURPOSES
Approved on June 17, 1992

ARTICLE I
TITLE, POLICY, PRINCIPLES AND DEFINITIONS OF TERMS

SECTION 1. Title. – This Act shall be known as the “*Special Protection of Children Against Abuse, Exploitation and Discrimination Act.*”

SEC. 2. Declaration of State Policy and Principles. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

SEC. 3. Definition of Terms. –

- (a) *Children* refers to persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;
- (b) *Child abuse* refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
 - (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
 - (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
 - (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
 - (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.
- (c) *Circumstances which gravely threaten or endanger the survival and normal development of children* include, but are not limited to, the following:
 - (1) Being in a community where there is armed conflict or being affected by armed conflict-related activities;
 - (2) Working under conditions hazardous to life, safety and morals which unduly interfere with their normal development;

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- (3) Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or any adult supervision needed for their welfare;
 - (4) Being a member of an indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;
 - (5) Being a victim of a man-made or natural disaster or calamity; or
 - (6) Circumstances analogous to those abovestated which endanger the life, safety or normal development of children.
- (d) *Comprehensive program against child abuse, exploitation and discrimination* refers to the coordinated program of services and facilities to protect children against:
- (1) Child prostitution and other sexual abuse;
 - (2) Child trafficking;
 - (3) Obscene publications and indecent shows;
 - (4) Other acts of abuse; and
 - (5) Circumstances which threaten or endanger the survival and normal development of children.

ARTICLE II

PROGRAM ON CHILD ABUSE, EXPLOITATION AND DISCRIMINATION

SECTION 4. *Formulation of the Program.* – There shall be a comprehensive program to be formulated by the Department of Justice and the Department of Social Welfare and Development in coordination with other government agencies and private sector concerned, within one year from the effectivity of this Act, to protect children against child prostitution and other sexual abuse; child trafficking; obscene publications and indecent shows; other acts of abuse; and circumstances which endanger child survival and normal development.

ARTICLE III

CHILD PROSTITUTION AND OTHER SEXUAL ABUSE

SECTION 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

- (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
 - (1) Acting as a procurer of a child prostitute;
 - (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
 - (3) Taking advantage of influence or relationship to procure a child as a prostitute;
 - (4) Threatening or using violence towards a child to engage him as a prostitute; or
 - (5) Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.

- (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under 12 years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal* in its medium period; and
- (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

SEC. 6. Attempt to Commit Child Prostitution. – There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

ARTICLE IV CHILD TRAFFICKING

SECTION 7. Child Trafficking. – Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of *reclusion temporal* to *reclusion perpetua*. The penalty shall be imposed in its maximum period when the victim is under 12 years of age.

SEC. 8. Attempt to Commit Child Trafficking. – There is an attempt to commit child trafficking under Section 7 of this Act:

- (a) When a child travels alone to a foreign country without valid reason therefor and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child’s parents or legal guardian;
- (b) When a pregnant mother executes an affidavit of consent for adoption for a consideration;
- (c) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking; or
- (d) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or
- (e) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-caring institutions who can be offered for the purpose of child trafficking.

A penalty lower by two degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act.

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ARTICLE V

OBSCENE PUBLICATIONS AND INDECENT SHOWS

SECTION 9. *Obscene Publications and Indecent Shows.* – Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video pose, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of *prision mayor* in its medium period.

If the child used as a performer, subject or seller/distributor is below 12 years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of *prision mayor* in its medium period.

ARTICLE VI

OTHER ACTS OF ABUSE

SECTION 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*

- (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.
- (b) Any person who shall keep or have in his company a minor, 12 years or under or who in 10 years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of *prision mayor* in its maximum period and a fine of not less than Fifty Thousand Pesos (P50,000): *Provided*, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition, or acts in the performance of a social, moral or legal duty.
- (c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty of *prision mayor* in its medium period and a fine of not less than Forty Thousand Pesos (P40,000): *Provided, however*, That should the perpetrator be an ascendant, stepparent or guardian of the minor, the penalty to be imposed shall be *prision mayor* in its maximum period, a fine of not less than Fifty Thousand Pesos (P50,000), and the loss of parental authority over the minor.
- (d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall be imposed a penalty of *prision mayor* in its medium period and a fine of not less than Fifty Thousand Pesos (P50,000), and the loss of the license to operate such a place or establishment.
- (e) Any person who shall use, coerce, force or intimidate a streetchild or any other child to:
 - (1) Beg or use begging as a means of living;
 - (2) Act as conduit or middlemen in drug trafficking or pushing; or
 - (3) Conduct any illegal activities, shall suffer the penalty of *prision correccional* in its medium period to *reclusion perpetua*.

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder,

homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under 12 years of age. The penalty for the commission of acts punishable under Articles 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one degree higher than that imposed by law when the victim is under 12 years of age.

The victim of the acts committed under this section shall be entrusted to the care of the Department of Social Welfare and Development.

ARTICLE VII

SANCTIONS FOR ESTABLISHMENTS OR ENTERPRISES

SECTION 11. *Sanctions of Establishments or Enterprises which Promote, Facilitate, or Conduct Activities Constituting Child Prostitution and Other Sexual Abuse, Child Trafficking, Obscene Publications and Indecent Shows, and Other Acts of Abuse.* – All establishments and enterprises which promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse shall be immediately closed and their authority or license to operate cancelled, without prejudice to the owner or manager thereof being prosecuted under this Act and/or the Revised Penal Code, as amended, or special laws. A sign with the words “*off limits*” shall be conspicuously displayed outside the establishments or enterprises by the Department of Social Welfare and Development for such period which shall not be less than one year, as the Department may determine. The unauthorized removal of such sign shall be punishable by *prision correccional*.

An establishment shall be deemed to promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse if the acts constituting the same occur in the premises of said establishment under this Act or in violation of the Revised Penal Code, as amended. An enterprise such as a sauna, travel agency, or recruitment agency which: promotes the aforementioned acts as part of a tour for foreign tourists; exhibits children in a lewd or indecent show; provides child masseurs for adults of the same or opposite sex and said services include any lascivious conduct with the customer; or solicits children for activities constituting the aforementioned acts shall be deemed to have committed the acts penalized herein.

ARTICLE VIII

WORKING CHILDREN

SECTION 12. *Employment of Children.* – Children below 15 years of age may be employed: *Provided, That*, the following minimum requirements are present:

- (a) The employer shall secure for a work permit from the Department of Labor and Employment;
- (a) The employer shall ensure the protection, health, safety and morals of the child;
- (b) The employer shall institute measures to prevent exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and
- (c) The employer shall formulate and implement a continuous program for training and skill acquisition of the child.

The Department of Labor and Employment shall promulgate rules and regulations necessary for the effective implementation of this section.

SEC. 13. *Nonformal Education for Working Children.* – The Department of Education, Culture and Sports shall promulgate a course design under its non-formal education program aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.

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SEC. 14. Prohibition on the Employment of Children in Certain Advertisements. – No person shall employ child models in all commercials or advertisements promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, and violence.

SEC. 15. Duty of Employer. – Every employer shall comply with the duties provided for in Articles 108 and 109 of Presidential Decree No. 603.

SEC. 16. Penalties. – Any person who shall violate any provision of this Article shall suffer the penalty of a fine of not less than One Thousand Pesos (P1,000) but not more than Ten Thousand Pesos (P10,000) or imprisonment of not less than three months but not more than three years, or both at the discretion of the court: *Provided*, That, in case of repeated violations of the provisions of this Article, the offender's license to operate shall be revoked.

ARTICLE IX

CHILDREN OF INDIGENOUS CULTURAL COMMUNITIES

SECTION 17. Survival, Protection and Development. – In addition to the rights guaranteed to children under this Act and other existing laws, children of indigenous cultural communities shall be entitled to protection, survival and development consistent with the customs and traditions of their respective communities.

SEC. 18. System of and Access to Education. – The Department of Education, Culture and Sports shall develop and institute an alternative system of education for children of indigenous cultural communities which culture-specific and relevant to the needs of and the existing situation in their communities. The Department of Education, Culture and Sports shall also accredit and support nonformal but functional indigenous educational programs conducted by non-governmental organizations in said communities.

SEC. 19. Health and Nutrition. – The delivery of basic social services in health and nutrition to children of indigenous cultural communities shall be given priority by all government agencies concerned. Hospitals and other health institutions shall ensure that children of indigenous cultural communities are given equal attention. In the provision of health and nutrition services to children of indigenous cultural communities, indigenous health practices shall be respected and recognized.

SEC. 20. Discrimination. – Children of indigenous cultural communities shall not be subjected to any and all forms of discrimination.

Any person who discriminates against children of indigenous cultural communities shall suffer a penalty of *arresto mayor* in its maximum period and a fine of not less than Five Thousand Pesos (P5,000) more than Ten Thousand Pesos (P10,000).

SEC. 21. Participation. – Indigenous cultural communities, through their duly-designated or appointed representatives, shall be involved in planning, decision-making, implementation, and evaluation of all government programs affecting children of indigenous cultural communities. Indigenous institutions shall also be recognized and respected.

ARTICLE X

CHILDREN IN SITUATIONS OF ARMED CONFLICT

SECTION 22. Children as Zones of Peace. – Children are hereby declared as Zones of Peace. It shall be the responsibility of the State and all other sectors concerned to resolve armed conflicts in order to promote the goal of children as zones of peace. To attain this objective, the following policies shall be observed.

(a) Children shall not be the object of attack and shall be entitled to special respect. They shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment;

- (b) Children shall not be recruited to become members of the Armed Forces of the Philippines of its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies;
- (c) Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered;
- (d) The safety and protection of those who provide services including those involved in fact-finding missions from both government and non-government institutions shall be ensured. They shall not be subjected to undue harassment in the performance of their work;
- (e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots; and
- (f) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated due to armed conflict.

SEC. 23. *Evacuation of Children During Armed Conflict.* – Children shall be given priority during evacuation as a result of armed conflict. Existing community organizations shall be tapped to look after the safety and well-being of children during evacuation operations. Measures shall be taken to ensure that children evacuated are accompanied by persons responsible for their safety and well-being.

SEC. 24. *Family Life and Temporary Shelter.* – Whenever possible, members of the same family shall be housed in the same premises and given separate accommodation from other evacuees and provided with facilities to lead a normal family life. In places of temporary shelter, expectant and nursing mothers and children shall be given additional food in proportion to their physiological needs. Whenever feasible, children shall be given opportunities for physical exercise, sports and outdoor games.

SEC. 25. *Rights of Children Arrested for Reasons Related to Armed Conflict.*– Any child who has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy is entitled to the following rights:

- (a) Separate detention from adults except where families are accommodated as family units;
- (b) Immediate free legal assistance;
- (c) Immediate notice of such arrest to the parents or guardian of the child; and
- (d) Release of the child on recognizance within 24 hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.

If after hearing the evidence in the proper proceeding the court should find that the aforesaid child has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such child to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the Government, or duly-licensed agencies or any other responsible person, until he has had reached 18 years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the agency or responsible individual under whose care he has been committed.

The aforesaid child shall be subject to visitation and supervision by a representative of the Department of Social Welfare and Development or any duly-licensed agency or such other officer as the court may designate subject to such conditions as it may prescribe.

The aforesaid child whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.

SEC. 26. *Monitoring and Reporting of Children in Situations of Armed Conflict.* – The chairman of the barangay affected by the armed conflict shall submit the names of children residing in said barangay to the municipal social welfare and development officer within 24 hours from the occurrence of the armed conflict.

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ARTICLE XI REMEDIAL PROCEDURES

SECTION 27. *Who May File a Complaint.* – Complaints on cases of unlawful acts committed against children as enumerated herein may be filed by the following:

- (a) Offended party;
- (b) Parents or guardians;
- (c) Ascendant or collateral relative within the third degree of consanguinity;
- (d) Officer, social worker or representative of a licensed child-caring institution;
- (e) Officer or social worker of the Department of Social Welfare and Development;
- (f) Barangay chairman; or
- (g) At least three concerned, responsible citizens where the violation occurred.

SEC. 28. *Protective Custody of the Child.* – The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development pursuant to Executive Order No. 56, series of 1986. In the regular performance of this function, the officer of the Department of Social Welfare and Development shall be free from any administrative, civil or criminal liability. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603.

SEC. 29. *Confidentiality.* – At the instance of the offended party, his name may be withheld from the public until the court acquires jurisdiction over the case.

It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio broadcasting, producer and director of the film in case of the movie industry, to cause undue and sensationalized publicity of any case of violation of this Act which results in the moral degradation and suffering of the offended party.

SEC. 30. *Special Court Proceedings.* – Cases involving violations of this Act shall be heard in the chambers of the judge of the Regional Trial Court duly designated as Juvenile and Domestic Relations Court.

Any provision of existing law to the contrary notwithstanding and with the exception of *habeas corpus*, election cases, and cases involving detention prisoners and persons covered by Republic Act No. 4908, all courts shall give preference to the hearing or disposition of cases involving violations of this Act.

ARTICLE XII COMMON PENAL PROVISIONS

SECTION 31. *Common Penal Provisions.*

- (a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;
- (b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;
- (c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

- (d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;
- (e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: *Provided, however,* That if the penalty imposed is *reclusion perpetua* or *reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: *Provided, finally,* That if the penalty imposed is *prision correccional* or *arresto mayor*, the penalty of suspension shall also be imposed; and
- (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

ARTICLE XIII
FINAL PROVISIONS

SECTION 32. Rules and Regulations.— Unless otherwise provided in this Act, the Department of Justice, in coordination with the Department of Social Welfare and Development, shall promulgate rules and regulations for the effective implementation of this Act.

Such rules and regulations shall take effect upon their publication in two national newspapers of general circulation.

Sec. 33. Appropriations. – The amount necessary to carry out the provisions of this Act is hereby authorized to be appropriated in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 34. Separability Clause. – If any provision of this Act is declared invalid or unconstitutional, the remaining provisions not affected thereby shall continue in full force and effect.

SEC. 35. Repealing Clause. – All laws, decrees, or rules inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 36. Effectivity Clause. – This Act shall take effect upon completion of its publication in at least two national newspapers of general circulation.

REPUBLIC ACT No. 7658
AN ACT PROHIBITING THE EMPLOYMENT OF CHILDREN BELOW 15 YEARS OF AGE
IN PUBLIC AND PRIVATE UNDERTAKINGS, AMENDING FOR THIS PURPOSE
SECTION 12, ARTICLE VIII OF REPUBLIC ACT No. 7610
Approved on November 9, 1993

SECTION 1. Section 12, Article VIII of RA No. 7610 otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act” is hereby amended to read as follows:

Sec. 12. *Employment of Children.* – Children below 15 years of age shall not be employed except:

- (1) When a child works directly under the sole responsibility of his parents or legal guardian and where only members of the employer’s family are employed: *Provided, however,* That his employment neither endangers his life, safety, health and morals, nor impairs his normal developments; *Provided, further,* That the parent or legal guardian shall provide the said minor child with the prescribed primary and/or secondary education; or
- (2) Where a child’s employment or participation in public entertainment or information through cinema, theater, radio or television is essential: *Provided,* The employment contract is concluded by the child’s parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: and *Provided,* That the following requirements in all instances are strictly complied with:
 - (a) The employer shall ensure the protection, health, safety, morals and normal development of the child;
 - (b) The employer shall institute measures to prevent the child’s exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and
 - (c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

In the above exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements.

The Department of Labor and Employment shall promulgate rules and regulations necessary for the effective implementation of this Section.

Sec. 2. All laws, decrees, executive orders, rules and regulations or parts thereof contrary to, or inconsistent with this Act are hereby modified or repealed accordingly.

Sec. 3. This Act shall take effect 15 days after its complete publication in the Official Gazette or in at least two national newspapers or general circulation whichever comes earlier.

REPUBLIC ACT No. 7877
AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING ENVIRONMENT AND FOR OTHER PURPOSES
Approved on February 14, 1995

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

SECTION 1. Title. – This Act shall be known as the “*Anti-Sexual Harassment Act of 1995.*”

SEC. 2. Declaration of Policy. – The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful.

SEC. 3. Work, Education or Training-related Sexual Harassment Defined. – Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
- (2) The above acts would impair the employee’s rights or privileges under existing labor laws; or
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

(b) In an education or training environment, sexual harassment is committed:

- (1) Against one who is under the care, custody or supervision of the offender;
- (2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
- (3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
- (4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.

SEC. 4. Duty of the Employer or Head of Office in a Work-related, Education or Training Environment. – It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall:

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- (a) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

The said rules and regulations issued pursuant to this subsection (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

- (b) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainers and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.

In the case of a work-related environment, the committee shall be composed of at least one representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees.

In the case of the educational or training institution, the committee shall be composed of at least one representative from the administration, the trainers, teachers, instructors, professors or coaches and students or trainees, as the case may be.

The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.

SEC. 5. *Liability of the Employer, Head of Office, Educational or Training Institution.* – The employer or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

SEC. 6. *Independent Action for Damages.* – Nothing in this Act shall preclude the victim of work, education or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief.

SEC. 7. *Penalties.* – Any person who violates the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than one month nor more than six months, or a fine of not less than Ten Thousand Pesos (P10,000) nor more than Twenty Thousand Pesos (P20,000), or both such fine and imprisonment at the discretion of the court.

Any action arising from the violation of the provisions of this Act shall prescribe in three years.

SEC. 8. *Separability Clause.* – If any portion or provision of this Act is declared void or unconstitutional, the remaining portions or provisions hereof shall not be affected by such declaration.

SEC. 9. *Repealing Clause.* – All laws, decrees, orders, rules and regulations, other issuances, or parts thereof inconsistent with provisions of this Act are hereby repealed or modified accordingly.

SEC. 10. *Effectivity Clause.* – This Act shall take effect 15 days after its complete publication in at least two national newspapers of general circulation.

REPUBLIC ACT No. 8043
AN ACT ESTABLISHING THE RULES TO GOVERN INTER-COUNTRY ADOPTION
OF FILIPINO CHILDREN, AND FOR OTHER PURPOSES
Approved on June 7, 1995

ARTICLE I
GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known as the “*Inter-Country Adoption Act of 1995.*”

SEC. 2. Declaration of Policy.– It is hereby declared the policy of the State to provide every neglected and abandoned child with a family that will provide such child with love and care as well as opportunities for growth and development. Towards this end, efforts shall be exerted to place the child with an adoptive family in the Philippines. However, recognizing that inter-country adoption may be considered as allowing aliens, not presently allowed by law to adopt Filipino children if such children cannot be adopted by qualified Filipino citizens or aliens, the State shall take measures to ensure that inter-country adoptions are allowed when the same shall prove beneficial to the child’s best interests, and shall serve and protect his/her fundamental rights.

SEC. 3. Definition of Terms. – As used in this Act, the term:

- (a) *Inter-country adoption* refers to the socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued outside the Philippines.
- (b) *Child* means a person below 15 years of age unless sooner emancipated by law.
- (c) *Department* refers to the Department of Social Welfare and Development of the Republic of the Philippines.
- (d) *Secretary* refers to the Secretary of the Department of Social Welfare and Development.
- (e) *Authorized and accredited agency* refers to the State welfare agency or a licensed adoption agency in the country of the adopting parents which provide comprehensive social services and which is duly recognized by the Department.
- (f) *Legally-free child* means a child who has been voluntarily or involuntarily committed to the Department, in accordance with the Child and Youth Welfare Code.
- (g) *Matching* refers to the judicious pairing of the adoptive child and the applicant to promote a mutually satisfying parent-child relationship.
- (h) *Board* refers to the Inter-Country Adoption Board.

ARTICLE II
THE INTER-COUNTRY ADOPTION BOARD

SECTION 4. The Inter-Country Adoption Board. – There is hereby created the Inter-Country Adoption Board, to act as the central authority in matters relating to inter-country adoption. It shall act as the policy-making body for purposes of carrying out the provisions of this Act, in consultation and coordination with the Department, the different child-care and placement agencies, adoptive agencies, as well as non-governmental organizations engaged in child-care and placement activities. As such, it shall:

- (a) Protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child;
- (b) Collect, maintain, and preserve confidential information about the child and the adoptive parents;

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- (c) Monitor, follow up, and facilitate completion of adoption of the child through authorized and accredited agency;
- (d) Prevent improper financial or other gain in connection with an adoption and deter improper practices contrary to this Act;
- (e) Promote the development of adoption services including post-legal adoption;
- (f) License and accredit child-caring/placement agencies and collaborate with them in the placement of Filipino children;
- (g) Accredit and authorize foreign adoption agency in the placement of Filipino children in their own country; and
- (h) Cancel the license to operate and blacklist the child-caring and placement agency or adoptive agency involved from the accreditation list of the Board upon a finding of violation of any provision under this Act.

SEC. 5. Composition of the Board. – The Board shall be composed of the Secretary of the Department as *ex officio* Chairman, and six other members to be appointed by the President for a nonrenewable term of six years: *Provided*, That there shall be appointed one psychiatrist or psychologist, two lawyers who shall have at least the qualifications of a Regional Trial Court judge, one registered social worker and two representatives from non-governmental organizations engaged in child-caring and placement activities. The members of the Board shall receive a *per diem* allowance of One Thousand Five Hundred Pesos (P1,500) for each meeting attended by them: *Provided, further*, That no compensation shall be paid for more than four meetings a month.

SEC. 6. Powers and Functions of the Board. – The Board shall have the following powers and functions:

- (a) to prescribe rules and regulations as it may deem reasonably necessary to carry out the provisions of this Act, after consultation and upon favorable recommendation of the different agencies concerned with the child-caring, placement, and adoption;
- (b) to set the guidelines for the convening of an Inter-country Adoption Placement Committee which shall be under the direct supervision of the Board;
- (c) to set the guidelines for the manner by which selection/matching of prospective adoptive parents and adoptive child can be made;
- (d) to determine a reasonable schedule of fees and charges to be exacted in connection with the application for adoption;
- (e) to determine the form and contents of the application for inter-country adoption;
- (f) to formulate and develop policies, programs and services that will protect the Filipino child from abuse, exploitation, trafficking and other adoption practice that is harmful, detrimental and prejudicial to the best interest of the child;
- (g) to institute systems and procedures to prevent improper financial gain in connection with adoption and deter improper practices which are contrary to this Act;
- (h) to promote the development of adoption services, including post-legal adoption services,
- (i) to accredit and authorize foreign private adoption agencies which have demonstrated professionalism, competence and have consistently pursued non-profit objectives to engage in the placement of Filipino children in their own country: *Provided*, That such foreign private agencies are duly authorized and accredited by their own government to conduct inter-country adoption: *Provided, however*, That the total number of authorized and accredited foreign private adoption agencies shall not exceed 100 a year;
- (j) to take appropriate measures to ensure confidentiality of the records of the child, the natural parents and the adoptive parents at all times;

- (k) to prepare, review or modify, and thereafter, recommend to the Department of Foreign Affairs, Memoranda of Agreement respecting inter-country adoption consistent with the implementation of this Act and its stated goals, entered into, between and among foreign governments, international organizations and recognized international non-governmental organizations;
- (l) to assist other concerned agencies and the courts in the implementation of this Act, particularly as regards coordination with foreign persons, agencies and other entities involved in the process of adoption and the physical transfer of the child; and
- (m) to perform such other functions on matters relating to inter-country adoption as may be determined by the President.

ARTICLE III
PROCEDURE

SECTION 7. *Inter-Country Adoption as the Last Resort.* – The Board shall ensure that all possibilities for adoption of the child under the Family Code have been exhausted and that inter-country adoption is in the best interest of the child. Towards this end, the Board shall set up the guidelines to ensure that steps will be taken to place the child in the Philippines before the child is placed for inter-country adoption: *Provided, however,* That the maximum number that may be allowed for foreign adoption shall not exceed 600 a year for the first five years.

SEC. 8. *Who May be Adopted.* – Only a legally free child may be the subject of inter-country adoption. In order that such child may be considered for placement, the following documents must be submitted to the Board:

- (a) Child study;
- (b) Birth certificate/foundling certificate;
- (c) Deed of voluntary commitment/decreed of abandonment/death certificate of parents;
- (d) Medical evaluation /history;
- (e) Psychological evaluation, as necessary; and
- (f) Recent photo of the child.

SEC. 9. *Who May Adopt.* – Any alien or a Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child if he/she:

- (a) is at least 27 years of age and at least 16 years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent;
- (b) if married, his/her spouse must jointly file for the adoption;
- (c) has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his/her country;
- (d) has not been convicted of a crime involving moral turpitude;
- (e) is eligible to adopt under his/her national law;
- (f) is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;
- (g) agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;
- (h) comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and

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- (i) possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws.

SEC. 10. *Where to File Application.* – An application to adopt a Filipino child shall be filed either with the Philippine Regional Trial Court having jurisdiction over the child, or with the Board, through an intermediate agency, whether governmental or an authorized and accredited agency, in the country of the prospective adoptive parents, which application shall be in accordance with the requirements as set forth in the implementing rules and regulations to be promulgated by the Board.

The application shall be supported by the following documents written and officially translated in English.

- (a) Birth certificate of applicant(s);
- (b) Marriage contract, if married, and divorce decree, if applicable;
- (c) Written consent of their biological or adopted children above 10 years of age, in the form of sworn statement;
- (d) Physical, medical and psychological evaluation by a duly licensed physician and psychologist;
- (e) Income tax returns or any document showing the financial capability of the applicant(s);
- (f) Police clearance of applicant(s);
- (g) Character reference from the local church/minister, the applicant's employer and a member of the immediate community who have known the applicant(s) for at least five years; and
- (h) Recent postcard-size pictures of the applicant(s) and his immediate family;

The Rules of Court shall apply in case of adoption by judicial proceedings.

SEC. 11. *Family Selection/Matching.* – No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally. The clearance, as issued by the Board, with the copy of the minutes of the meetings, shall form part of the records of the child to be adopted. When the Board is ready to transmit the Placement Authority to the authorized and accredited inter-country adoption agency and all the travel documents of the child are ready, the adoptive parents, or any one of them, shall personally fetch the child in the Philippines.

SEC. 12. *Pre-adoptive Placement Costs.* – The applicant(s) shall bear the following costs incidental to the placement of the child:

- (a) The cost of bringing the child from the Philippines to the residence of the applicant(s) abroad, including all travel expenses within the Philippines and abroad; and
- (b) The cost of passport, visa, medical examination and psychological evaluation required, and other related expenses.

SEC. 13. *Fees, Charges and Assessments.* – Fees, charges, and assessments collected by the Board in the exercise of its functions shall be used solely to process applications for inter-country adoption and to support the activities of the Board.

SEC. 14. *Supervision of Trial Custody.* – The governmental agency or the authorized and accredited agency in the country of the adoptive parents which filed the application for inter-country adoption shall be responsible for the trial custody and the care of the child. It shall also provide family counseling and other related services. The trial custody shall be for a period of six months from the time of placement. Only after the lapse of the period of trial custody shall a decree of adoption be issued in the said country, a copy of which shall be sent to the Board to form part of the records of the child.

During the trial custody, the adopting parent(s) shall submit to the governmental agency or the authorized and accredited agency, which shall in turn transmit a copy to the Board, a progress report of the child's adjustment. The progress report shall be taken into consideration in deciding whether or not to issue the decree of adoption.

The Department of Foreign Affairs shall set up a system by which Filipino children sent abroad for trial custody are monitored and checked as reported by the authorized and accredited inter-country adoption agency as well as the repatriation to the Philippines of a Filipino child whose adoption has not been approved.

SEC. 15. Executive Agreement. – The Department of Foreign Affairs, upon representation of the Board, shall cause the preparation of Executive Agreements with countries of the foreign adoption agencies to ensure the legitimate concurrence of said countries in upholding the safeguards provided by this Act.

ARTICLE IV

PENALTIES

SECTION 16. Penalties.

(a) Any person who shall knowingly participate in the conduct or carrying out of an illegal adoption, in violation of the provisions of this Act, shall be punished with a penalty of imprisonment ranging from six years and one day to 12 years and/or a fine of not less than Fifty Thousand Pesos (P50,000), but not more than Two Hundred Thousand Pesos (P200,000), at the discretion of the court. For purposes of this Act, an adoption is illegal if it is effected in any manner contrary to the provisions of this Act or established State policies, its implementing rules and regulations, executive agreements, and other laws pertaining to adoption. Illegality may be presumed from the following acts:

- (1) consent for an adoption was acquired through, or attended by coercion, fraud, improper material inducement;
- (2) there is no authority from the Board to effect adoption;
- (3) the procedures and safeguards placed under the laws for adoption were not complied with; and
- (4) the child to be adopted is subjected to, or exposed to danger, abuse and exploitation.

(b) Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents and communications of adoption applications, cases and processes shall suffer the penalty of imprisonment ranging from one year and one day to two years, and/or a fine of not less than Five Thousand Pesos (P5,000), but not more than Ten Thousand Pesos (P10,000), at the discretion of the court.

A penalty lower by two degrees than that prescribed for the consummated felony under this Article shall be imposed upon the principals of the attempt to commit any of the acts herein enumerated.

Acts punishable under this Article, when committed by a syndicate or where it involves two or more children shall be considered as an offense constituting child trafficking and shall merit the penalty of *reclusion perpetua*.

Acts punishable under this Article are deemed committed by a syndicate if carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this Article. Penalties as are herein provided shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

SEC. 17. Public Officers as Offenders. – Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with existing civil service laws, rules and regulations: *Provided*, That upon the filing of a case, either administrative or criminal, said government official, employee or functionary concerned shall automatically suffer suspension until the resolution of the case.

**ARTICLE V
FINAL PROVISIONS**

SECTION 18. *Implementing Rules and Regulations.* – The Inter-country Adoption Board, in coordination with the Council for the Welfare of Children, the Department of Foreign Affairs, and the Department of Justice, after due consultation with agencies involved in child-care and placement, shall promulgate the necessary rules and regulations to implement the provisions of this Act within six months after its effectivity.

SEC. 19. *Appropriations.* – The amount of Five Million Pesos (P5 Million) is hereby appropriated from the proceeds of the Lotto for the initial operations of the Board and subsequently the appropriations of the same shall be included in the General Appropriations Act for the year following its enactment.

SEC. 20. *Separability Clause.* – If any provision, or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected, shall remain valid and subsisting.

SEC. 21. *Repealing Clause.* – Any law, decree, executive order, administrative order or rules and regulations contrary to, or inconsistent with the provisions of this Act are hereby repealed, modified or amended accordingly.

SEC. 22. *Effectivity Clause.* – This Act shall take effect 15 days after its publication in two newspapers of general circulation.

**AMENDED IMPLEMENTING RULES AND REGULATIONS
ON INTER-COUNTRY ADOPTION (REPUBLIC ACT No. 8043)**

Effective March 13, 2007

Pursuant to the authority of the Inter-Country Adoption Board, under Section 6, paragraph (a) of Republic Act No. 8043, otherwise known as “The Inter-Country Adoption Act of 1995” and in accordance with the relevant provisions of Republic Act No. 8552 otherwise known as the Domestic Adoption Act of 1998 and the provisions of The Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption as well as the United Nations Convention on the Rights of the Child, the following Rules and Regulations are hereby promulgated to govern the adoption of a Filipino child abroad:

**ARTICLE I
GENERAL PROVISIONS**

Section 1. Policy Objectives. – It is the policy of the State to ensure that every child shall grow up in a family that will provide such child with love and care as well as opportunities for growth and development. Towards this end, efforts shall be exerted to place every child who is legally free for adoption, with an adoptive family in the Philippines. The State shall take measures and safeguards to ensure that inter-country adoption is allowed when the same shall prove beneficial to the child’s best interests and shall serve and protect his/her fundamental rights. In this respect, the State shall establish a system of cooperation with other States, through their respective Central/Competent Authorities and accredited bodies to prevent the sale, trafficking and abduction of children.

Sec. 2. Applicability. – The Rules shall apply to the adoption of a legally free Filipino child in a foreign country by a person qualified to adopt under Republic Act 8043 otherwise known as the Inter-Country Adoption Law of 1995.

**ARTICLE II
DEFINITION OF TERMS**

Section 3. Definition of Terms. – As used in these Rules, unless the context otherwise requires, the following terms shall mean:

- (a) *Act* shall refer to Republic Act No. 8043, otherwise known as “The Inter-Country Adoption Act of 1995”;
- (b) *Applicant* shall refer to a married couple or a single person who files an application;
- (c) *Application* shall refer to the duly accomplished application form, home study report including its supporting documents from an authorized or accredited agency or body by the ICAB;
- (d) *Accreditation of Local Child Caring Agency/Child Placing Agency* shall refer to the recognition of a social welfare development program or service that such is implemented by a social welfare and development agency in compliance with appropriate standards evidenced by a certificate of accreditation issued by the Department of Social Welfare and Development.
- (e) *Accreditation of Foreign Adoption Agencies* shall refer to the recognition granted by the Board to a Foreign Adoption Agency duly licensed by the state welfare authority in a Non-Contracting State as meeting the official requirements to participate in the Philippine Inter-country Adoption Program.
- (f) *Authorization* shall refer to recognition granted by the Board to a Foreign Adoption Agency duly accredited by the Central Authority of a Contracting State to participate in the Philippine Inter-country Adoption Program.
- (g) *Board* shall refer to the Inter-Country Adoption Board which is the Central Authority in matters relating to inter-country adoption and the policy-making body for the purposes of carrying out the provisions of Republic Act No. 8043 and the Convention;

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- (h) *Central Authority* shall refer to the key governmental entity which is responsible for carrying out the provisions of the Convention;
- (i) *Chairperson* shall refer to the Chairperson of the Board;
- (j) *Child* shall refer to a Filipino child below 15 years of age who can be legally adopted;
- (k) *Child Caring Agency* shall refer to a welfare agency that provides a 24 hour resident group care service for the physical, mental, social and spiritual well being of nine or more mentally gifted, abandoned, neglected, disabled, or disturbed children, or youth offenders. The term shall include an institution whose primary purpose is to provide education whenever nine or more of its pupils or wards in the ordinary course of events do not return to the homes of their parents or guardians for at least two months of summer vacation;
- (l) *Child Placing Agency* shall refer to an institution licensed by the Department to assume the care, custody, protection and maintenance of children for purposes of adoption, guardianship or foster care;
- (m) *Child with Special Needs* shall refer to any child who is difficult to place in view of some physical, psychological, and/ or social limitations including but not limited to being an older child, belonging to a sibling group or those who may be under such analogous circumstances;
- (n) *Committee* shall refer to the Inter-Country Adoption Placement Committee;
- (o) *Competent Authority* shall refer to any State entity which performs all or most of the functions of Chapter II of the Convention;
- (p) *Contracting State* shall refer to any State Party to the Convention;
- (q) *Convention* shall refer to The Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption;
- (r) *Decree of Abandonment* shall refer to the final written judicial order declaring a child to be dependent, abandoned, and neglected and committing such child to the care of the Department through a person or duly licensed child caring/placing agency or institution. The rights of the biological parents, guardian or other custodian to exercise authority over the child shall cease;
- (s) *Deed of Voluntary Commitment* shall refer to the notarized instrument relinquishing parental authority and committing the child to the care and custody of the Department executed by the child's biological parent(s) or by the child's legal guardian in their absence, mental incapacity or death, to be signed in the presence of an authorized representative of the Department, after counseling and other services have been made available to encourage the child's biological parent(s) to keep the child;
- (t) *Department* shall refer to the Department of Social Welfare and Development;
- (u) *Foreign Adoption Agency* shall refer to the State Welfare Agency or the licensed and accredited agency in the country of the foreign adoptive parents that provides comprehensive social services and is duly recognized by the Board;
- (v) *Inter-Country Adoption* shall refer to the socio-legal process of adopting a child by a foreign national or a Filipino citizen permanently residing abroad where the petition for adoption is filed, the supervised trial custody is undertaken, and the decree of adoption is issued in the foreign country where the applicant resides thereby creating a permanent parent-child relationship between the child and the adoptive parents;
- (w) *Illegal Adoption* shall refer to an adoption that is effected in any manner contrary to the provisions of RA No. 8043, these Rules, established State policies, Executive Agreements and other laws pertaining to adoption;
- (x) *Legally free child* shall refer to a child who, in accordance with the Child and Youth Welfare Code, has been voluntarily or involuntarily committed to the Department, or to a duly licensed and accredited child-placing or child-caring agency, freed of the parental authority of his/her biological parent/s or guardian/s or adopter/s in case of rescission of adoption;

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- (y) *Liaison Service* shall refer to the effective delivery of facilitating social services provided by a licensed and accredited Child Caring or Child Placing Agency (CCA/CPA) to represent a Foreign Adoption Agency (FAA) in the Philippines;
- (z) *Licensing* shall refer to the process conducted by DSWD in assessing qualification and authorizing a registered social welfare and development (SWD) agency to operate as a social work agency.
- (aa) *Matching* shall refer to the judicious pairing of the applicant and the child to promote a mutually satisfying parent-child relationship;
- (bb) *Non-Contracting State* shall refer to any State not party to the Convention with which the Board has established working relations.
- (cc) *Quorum* shall refer to the minimum number that must be present at a meeting or assembly to make its proceedings valid.
- (dd) *Secretary* shall refer to the Secretary of the Department;
- (ee) *Special Home Finding* shall refer to the process of recruiting or identifying suitable adoptive parents for children with special needs through the Central Authority or a Foreign Adoption Agency of the State if there are no available families in the Roster of Approved Families.

ARTICLE III INTER-COUNTRY ADOPTION BOARD

SECTION 4. Powers and Functions of the Board. – The Board shall have the following powers and functions:

- (a) To prescribe rules and regulations as it may deem reasonably necessary to carry out the provisions of the Act, after consultations and upon favorable recommendation of the different agencies concerned with child-caring, placement and adoption;
- (b) To set the guidelines for the convening of the Inter-country Adoption Placement Committee which shall be under the direct supervision of the Board;
- (c) To set the guidelines for the manner of selection and matching of prospective adoptive parents and adoptive child;
- (d) To determine a reasonable schedule of fees and charges to be exacted in connection with the application for and process of adoption;
- (e) To determine the form and content of the application for inter-country adoption;
- (f) To formulate and develop policies, programs and services that will protect the Filipino child from abuse, exploitation, trafficking and adoption practices that are harmful, detrimental and prejudicial to the best interests of the child;
- (g) To institute systems and procedures to prevent improper financial gain in connection with adoption and deter improper practices which are contrary to the Act;
- (h) To promote the development of adoption services, including post-legal adoption services;
- (i) To accredit and authorize foreign private adoption agencies which have demonstrated professionalism and competence and have consistently pursued non-profit objectives, to engage in the placement of Filipino children in their own country; provided, that such foreign adoption agencies are duly authorized and accredited by their own government to conduct inter-country adoption; provided further, that the total number of authorized and accredited foreign private adoption agencies shall not exceed 100 a year.
- (j) To take appropriate measures to ensure the confidentiality of the records of the child, the natural parents and the adoptive parents at all times;

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- (k) To prepare, review, modify and recommend to the Department of Foreign Affairs, Memoranda of Agreement on inter-country adoption consistent with the implementation of this Act and its stated goals, entered into, between and among the Philippines and foreign governments, international organizations and recognized international non-governmental organizations;
- (l) To assist other concerned agencies and the courts in the implementation of this Act, particularly in the coordination with foreign persons, agencies and other entities involved in the process of adoption and the physical transfer of the child; and
- (m) To perform such other functions on matters relating to inter-country adoption as may be determined by the President of the Republic of the Philippines.

SEC. 5. Meetings. – The Board shall meet regularly or upon the call of the Chairperson. In the absence of the Chairperson, the members present who constitute a quorum may choose a presiding officer from among themselves. A majority of all members of the Board shall constitute a quorum. The Board may hold meetings in executive session.

SEC. 6. Voting. – The Board shall act as a collegial body. The vote of a majority of the members of the Board constituting a quorum shall be necessary to perform its functions as provided in the Act. The Chairperson of the Board shall not vote in a meeting except to break a tie.

ARTICLE IV SECRETARIAT

SECTION 7. Executive Director. – The Executive Director shall head the Secretariat. He/she shall be appointed by the Chairperson with the concurrence of the majority of the Board. The Executive Director shall serve a term of six years and may be reappointed by the Chairperson for another term with the concurrence of the Board.

SEC. 8. Functions of the Executive Director. – The Executive Director shall act as the executive officer of the Secretariat and shall exercise supervision over its personnel. He/she shall act as the Secretary of the Board.

SEC. 9. Qualifications of the Executive Director. – The Executive Director shall have the qualifications of a Director IV, preferably with a master's degree in Social Work or its equivalent in a related discipline, and at least three years of supervisory experience.

SEC. 10. Support Staff. – The Secretariat shall have such operating units and personnel as the Board may find necessary for the proper performance of its function.

SEC. 11. Functions of the Secretariat. – The functions of the Secretariat shall include the following:

- (a) Provide secretariat, records keeping and other services to the Board and the Committee;
- (b) Review, and process applications, matching proposals, placements, and all documents requiring action by the Board;
- (c) Maintain and facilitate communications with the Committee and the different government offices, non-governmental agencies, Central Authorities (CAs), Foreign Adoption Agencies (FAAs), and the Department of Foreign Affairs (DFA) or Philippine Foreign Service Posts and the general public;
- (d) Review accreditation and authorization applications and status of agencies for action by the Board;
- (e) Perform such other duties as the Board may direct.

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**ARTICLE V
INTER-COUNTRY ADOPTION PLACEMENT COMMITTEE**

SECTION 12. Composition. – The Board shall maintain two teams for the Placement Committee with the following representations for each team of consultants: a child psychiatrist or psychologist, a medical doctor, a lawyer, a registered social worker, and a representative of a non-governmental organization engaged in child welfare. The two teams of the Placement Committee shall be scheduled to attend the Matching Conference alternately once a week. Provided, that in every matching conference, there must be a quorum of three members.

The Board shall appoint qualified persons who shall serve in the Committee for a term of two years which may be renewed twice at the discretion of the Board.

SEC. 13. Functions of the Committee. – The Committee shall have the following functions:

- (a) Carry-out an integrated system and network of selection and matching of applicants and children.
- (b) Recommend to the Board approval of applications and matching proposals.
- (c) Assist the Board in its accreditation function.
- (d) Act as consultants to the Secretariat in their area/field of expertise.
- (e) Perform such other functions and duties as may be determined by the Board.

SEC. 14. Allowances of Committee Members. – A Committee member shall receive an honorarium which shall be determined by the Board subject to the usual accounting and auditing rules and regulations.

SEC. 15. Rules and Procedures. – The Committee shall submit, for the approval of the Board, its internal rules and procedures and any amendments thereafter.

SEC. 16. Meetings. – The Committee shall meet regularly or upon the call of the Board.

**ARTICLE VI
AUTHORIZATION AND ACCREDITATION**

SECTION 17. Local Child Caring and Child Placing Agencies. – Only local child caring and placing agencies accredited by the Department and with personnel and facilities to undertake comprehensive child welfare program can participate in the inter-country adoption program. Child caring agencies/child placing agencies are required to apply for their accreditation by the Department within one year from the date of issuance of their license.

The Board authorizes the Department to accredit child caring agencies/child placing agencies to participate in the inter-country adoption program.

SEC. 18. Foreign Adoption Agencies. – Foreign adoption agencies from both Contracting States and Non-Contracting States can participate in the Philippine Inter-country Adoption program.

An authorization is granted by the Board to a foreign adoption agency coming from a Contracting State. The Central Authorities of Contracting States may adopt a system of cooperation to implement the process of authorization.

An accreditation is granted by the Board to a foreign adoption agency coming from Non-Contracting States.

The authorization or accreditation by the Board may be issued upon submission of the following documentary requirements:

- (a) A license and/or accreditation or authorization from its government to operate as an adoption agency to carry out inter-country adoptions;

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- (b) Name and qualifications of the members of the Board of Directors, senior officers and other staff involved in inter-country adoption;
- (c) Detailed description of its programs and services, research studies and publications;
- (d) Audited financial report of the last two years including sources of funds, adoption fees and charges;
- (e) Undertaking under oath that it shall assume responsibility for the selection of qualified applicants; that it shall comply with the Philippine laws on inter-country adoption; that it shall inform the Board of any change in the foregoing information; and shall comply with post adoption requirements as specified by the Board; and
- (f) Such other requirements which the Board may deem necessary in the best interests of the child.

The abovementioned documents, written, and in the proper case officially translated to English, and whenever practicable, authenticated by Philippine Consular authorities, shall be submitted to the Board.

SEC. 19. Authorization and Accreditation Process for Foreign Adoption Agencies. – The designated Board Member/s or duly-authorized representative/s of the Board may conduct an authorization or accreditation visit to foreign adoption agencies from Contracting States and Non-Contracting States. The Board shall determine if the authorization or accreditation can be done through desk review of submitted documents or through ocular visit.

Guidelines established by the Board shall apply.

SEC. 20. Renewal of Authorization/Accreditation. – The FAA shall notify the Board of its interest in renewing its authorization/accreditation at least 60 days before the expiration of its authorization/accreditation. The Board shall act on its application for renewal within 30 working days upon receipt. When there are violations or complaints against the FAA, in which case, appropriate action shall be undertaken by the Board.

SEC. 21. Accreditation and Authorization Costs. – The FAA upon application for accreditation, authorization or its renewal, shall pay a fee which will be determined by the Board and which shall be utilized for expenses relative to the Board's accreditation and/or authorization visit to the foreign adoption agency/ies of the Contracting or Non-Contracting State and other related activities of the Board.

SEC. 22. Liaison Services. – Only a non-profit licensed and accredited child caring or child placing agency shall be authorized to serve as liaison of a Foreign Adoption Agency with its dealings with the Board.

The Board shall periodically review the liaison services of the agency and may terminate any such service when, after a thorough evaluation, the agency is proven to have violated the requirements under these Rules. The agency concerned shall be given prior notice as provided for in Section 23.

ARTICLE VII SUSPENSION OR REVOCATION OF AUTHORIZATION OR ACCREDITATION

SECTION 23. Grounds. – The Board shall suspend or revoke the authorization or accreditation of a foreign adoption agency if shown to have engaged in any of the following acts:

- (a) Giving or accepting directly or indirectly, any consideration, money, goods or services in exchange for an allocation of a child in violation of the Rules;
- (b) Misrepresenting or concealing any vital information required under the Rules;
- (c) Offering money, goods or services to any member, official or employee, or representative of the Board, to give preference in the adoption process to any applicant;

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- (d) Advertising or publishing the name or photograph of a child for adoption to influence any person to apply for adoption. However, in cases of hard to place children where Special Home Finding efforts may have to be undertaken, guidelines shall be promulgated by the Board.
- (e) Failure to perform any act required under the Rules which results in prejudice to the child or applicant;
- (f) Appointing or designating any liaison or agent without the prior approval of the Board; and
- (g) Any other act in violation of the provisions of the Act, the implementing rules and regulations and other related laws or issuances of the Board.

In case of local child caring agencies/child placing agencies, the disciplinary proceedings shall be done through the Department. Rules of the Department shall apply.

Any criminal acts committed by the agency or any of its personnel shall be dealt with in accordance with existing laws.

SEC. 24. Who May Initiate Action to Suspend or Revoke Authorization or Accreditation.— The Board, *motu proprio*, or upon receipt of a written complaint, or information regarding any violation or irregularity by a foreign adoption agency, may order the initial inquiry on the agency. If the report, complaint or request for investigation has legal and factual basis, the Board shall furnish the agency concerned with the copy of the report, complaint or request and shall require the same to answer within 15 working days from receipt of notice. Failure to answer within the required period shall be considered as ground for summary suspension or revocation of the accreditation/authorization of the foreign adoption agency.

In cases involving local child caring agencies/child placing agencies, the Board shall endorse the complaints to the Department for appropriate action within 15 working days. Rules and regulations in handling complaints established by the Department shall apply.

SEC. 25. Procedures for Suspension or Revocation of Authorization/Accreditation of Foreign Adoption Agency. — Upon receipt of the answer, the Board shall study the case and may refer the same to the concerned Central Authority or government regulatory agency of the State or country where the agency operates for comment/s.

Depending on the gravity of the violation charged, the Board may preventively suspend for a maximum of 90 working days, any dealings with the agency concerned during pendency of the investigation, provided that no child shall be prejudiced by such action.

Upon termination of the review and study of the case by the Board, the decision of the Board shall be communicated in writing to the concerned agency and the concerned Central Authority or government regulatory agency of the State or country where the agency operates.

ARTICLE VIII INTER-COUNTRY ADOPTION PROCESS

SECTION 26. Who May Be Adopted. — Any child who has been voluntarily or involuntarily committed to the Department as dependent, abandoned or neglected pursuant to the provisions of the Child and Youth Welfare Code may be the subject of Inter-Country Adoption; Provided that in the case of a child who is voluntarily committed, the physical transfer of said child shall be made not earlier than six months from the date of execution of the Deed of Voluntary Commitment by the child's biological parent/s or guardian. Provided further, however, that this prohibition against physical transfer shall not apply to children being adopted by a relative or to children with special medical conditions.

SEC. 27. Who May Adopt. — Any foreign national or Filipino citizen permanently residing abroad who has the qualifications and none of the disqualifications under the Act may file an Application if he/she:

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- (a) Is at least 27 years of age and is at least 16 years older than the child to be adopted at the time of the filing of the application, unless the applicant is the parent by nature of the child to be adopted or is the spouse of such parent by nature;
- (b) Has the capacity to act and assume all the rights and responsibilities incidental to parental authority under his/her national law;
- (c) Has undergone appropriate counseling from an accredited counselor in his/her country;
- (d) Has not been convicted of a crime involving moral turpitude;
- (e) Is eligible to adopt under his/her national law;
- (f) Can provide the proper care and support and give the necessary moral values and example to the child and, in the proper case, to all his/her other children;
- (g) Comes from a country
 - (i) With whom the Philippines has diplomatic relations;
 - (ii) Whose government maintains a foreign adoption agency; and
 - (iii) Whose laws allow adoption; and
- (h) Files jointly with his/her spouse, if any, who shall have the same qualifications and none of the disqualifications to adopt as prescribed above.

SEC. 28. Required Documents of Applicants. – The following documents shall be required of the applicants for inter-country adoption.

- (a) Application Form. An application form prescribed by the Board which includes the following shall be accomplished by the husband and wife:
 - (1) Undertaking under oath signed by the applicants,
 - (2) Information and Personal Data of the Applicants.
- (b) Home Study Report to be prepared by the Central Authority or an ICAB accredited Foreign Adoption Agency.
- (c) Supporting Documents. The supporting documents to be attached to the Application shall consist of the following:
 - (1) Birth Certificates of the Applicants and, in cases of relative adoption, such relevant documents that establish the relationship between the applicant claiming relationship to the child to be adopted;
 - (2) Marriage Contract of the applicants, and in the proper case, Decree of Divorce of all the previous marriages of both spouses;
 - (3) Written consent to the adoption in the form of a sworn statement by the biological and/or adopted children of the applicants who are 10 years of age or over;
 - (4) Physical and medical evaluation by a duly licensed physician;
 - (5) Psychological evaluation by a psychologist;
 - (6) Latest income tax return or other documents showing the financial capability of the applicant;
 - (7) Clearances issued by the Police Department or other proper government agency of the place where the applicants reside;
 - (8) Character reference from the local church/minister, the applicant's employer and a member of the immediate community who have known the applicant(s) for at least five years; and

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- (9) A Certification from the appropriate government agency that the applicant is qualified to adopt under his/her national law and that the child to be adopted is allowed to enter the country for trial custody and reside permanently in the said place once adopted;
- (10) Recent postcard size pictures of the applicant, their immediate family members and their home; and
- (11) Self-Report Questionnaire (required when the Psychological Evaluation is inadequate).

SEC. 29. Fees, Charges and Assessments. – There shall be a fee to be determined by the Board upon filing of the application for adoption. Upon acceptance of the matching proposal, a corresponding fee shall be charged based on the schedule of fees fixed by the Board and communicated to all Central Authorities and Foreign Adoption Agencies. These and other fees shall be charged to support the operational expenses of the inter-country adoption program. Such fees, charges and assessments shall be indicated in the application form and communicated to all Central Authorities and foreign adoption agencies.

SEC. 30. Where to File Application. – The application shall be filed with the Board through the Central Authority or an accredited Foreign Adoption Agency (FAA) in the country where the applicant resides. Foreigners who file a petition for adoption in the Philippines under the Domestic Adoption Act of 1998 otherwise known as RA 8552, the Court, after finding the petition to be sufficient in form and substance and a proper case for inter-country adoption, shall immediately transmit the petition to the Board for appropriate action. The Board shall then act on the application following the procedures described in these Rules.

SEC. 31. Roster of Approved Applicants. – The Board shall establish a Roster of Approved Applicants to be updated at least quarterly. The Board shall act on each application within one month from receipt thereof, provided the application and documentary requirements are complete.

SEC. 32. Endorsement of Child for Inter-Country Adoption. – A child who has been committed to the Department and who may be available for inter-country adoption shall be endorsed by the Department to the Board. The endorsement shall contain a certification by the Department that all possibilities for adoption of the child in the Philippines have been exhausted and that inter-country adoption is in the best interests of the child.

In cases of relative adoption, a Certification issued by the DSWD Field Office Director together with the Child Study Report (CSR) and other supporting documents shall be endorsed to the Board.

SEC. 33. Child's Supporting Documents. – The following documents pertaining to the child shall be attached to the endorsement:

- (a) Child Study and Updated Report (if CSR had been prepared more than six months ago) prepared by the social worker of the DSWD or NGO Child Caring/Child Placing Agency at the time of matching shall include information about the child's identity, upbringing, and ethnic, religious and cultural backgrounds, social environment, family history, medical history and special needs;
- (b) Security Paper (SECPA) of the Birth or Foundling Certificate;
- (c) Certified True Copy of the Decree of Abandonment together with the Certificate of Finality for such judgment or the Notarized Deed of Voluntary Commitment executed after the birth of the child;
- (d) Certified True Copy of the Death Certificate of the child's birthparent/s, if applicable;
- (e) Updated medical evaluation and history of the biological family, if available,
- (f) Psychological evaluation for children above five years old or as may be deemed necessary by the ICPC;
- (g) Child's own written consent to adoption, if he/she is 10 years or older, witnessed by a social worker of the Child Caring/Placing Agency and after proper counseling; and

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(h) Most recent whole body size picture of the child (taken within six months upon submission of documents). If applicable, any physical impairment of the child should be visible in the picture.

SEC. 34. Roster of Children Cleared for Inter-Country Adoption.— A Roster of Children endorsed by the Department for inter-country adoption shall be prepared, maintained and updated by the Secretariat on a monthly basis.

SEC. 35. Matching.— The matching of the child with an applicant shall be carried out during a matching conference by the Committee together with the head or social worker of the agency or the Secretariat social worker of the ICAB to whom the presentation is delegated. The Board shall set the guidelines for the manner by which the matching process shall be conducted. These are the matching procedures:

- (a) Pre-Matching
 - (i) Review of Adoption Dossiers
 - (ii) Submission of Matching Proposal
- (b) Matching Conference
 - (i) Presentation of the Social Worker
 - (ii) Deliberations
 - (iii) ICPC Recommendation
- (c) Post Matching Conference
 - (i) Presentation by the ICAB Secretariat Social Worker
 - (ii) Board Action

SEC. 36. Approval of Matching.— The Committee shall endorse the matching proposal to the Board for its approval or other appropriate action. The endorsement shall state the reasons for the Committee's recommendation of the placement.

SEC. 37. Board Action on Approved Matching.— The Board shall immediately act on the matching proposal of the Committee. If the same is approved, a notice of matching shall be sent to the concerned Central Authority or foreign adoption agency within five days from the date of approval and shall be accompanied by the following documents:

- (a) Child Study Report and Updated Report (if CSR had been prepared more than six months ago);
- (b) Updated medical evaluation of the child and psychological evaluation, if applicable;
- (c) Most recent whole body size picture of the child (taken within six months upon submission of documents); and
- (d) Itemized pre-adoptive placement costs.

The applicant/s shall notify the Central Authority or Foreign Adoption Agency in writing of their decision on the matching proposal within 15 working days from receipt of said proposal. If the applicant needs additional information about the child and/or they need more time to arrive at a decision, an extension of 30 working days may be granted.

SEC. 38. No Contact Between Applicant and Child's Parents.— No matching arrangement except under these Rules shall be made between the applicant and the child's parents/guardians or custodians, nor shall any contact between them concerning a particular child be done before the matching proposal of the Committee has been approved by the Board. This prohibition shall not apply in cases of adoption of a relative or in cases where the child's best interests as determined by the Board is at stake.

SEC. 39. Placement Authority. – The Board shall issue the Placement Authority within three working days upon receipt of the applicant’s acceptance of the matching proposal and the corresponding fees from the Central Authority or the FAA.

The Board shall transmit a copy of the Placement Authority to the Department of Foreign Affairs and to the Central Authority or FAA.

SEC. 40. Pre-Adoptive Placement Costs. – Upon acceptance of the matching proposal, the applicant, through the Central Authority or the FAA, shall pay the expenses incidental to the pre-adoptive placement of the child, including the cost of the child’s travel, medical and psychological evaluation and other related expenses.

SEC. 41. Pre-Departure Preparation of the Child. – After the issuance of the Placement Authority and prior to the departure, the child shall be prepared for his/her placement by the concerned Child Caring/Placing Agency to minimize the anxiety and trauma due to separation from the persons with whom the child may have formed attachments. Further, the preparation shall ensure that the child is physically able and emotionally ready to travel and to form new relationships.

SEC. 42. Physical Transfer of the Child. – The adoptive parents or anyone of them shall personally fetch the child from the Philippines not later than 20 working days after notice of issuance of the visa of the child for travel to the country where the applicant resides. The applicant shall stay in the country with the child for at least five days to allow bonding to occur between and among them.

Should the applicants be unable to fetch the child/children within the said period, a letter from the CA or FAA explaining such shall be required. The unauthorized failure of the applicant/s to fetch the child within said period may result in the cancellation of the Placement Authority.

SEC. 43. Failure of the Physical Transfer to Occur. – In case the adoption of the child is not pursued during the applicant’s period of stay in the country, the Board and the concerned Child Caring Agency shall be duly notified by the applicant. Appropriate steps shall be undertaken by the Board to ensure that the best interest of the child is protected.

The Board shall immediately inform the Central Authority and/or the FAA about the decision of the applicants to leave the child/children behind.

All travel documents of the child shall be turned over by the applicants to the Secretariat before returning to their country. In accordance with Article 19(3) of the Hague Convention, the applicants’ documents shall be returned to the Central Authority or FAA concerned.

SEC. 44. Transfer of Custody of the Child. – Trial custody shall start upon physical transfer of the child to the applicant who, as custodian, shall exercise substitute parental authority over the person of the child.

SEC. 45. Supervision of Pre-Adoptive Placement. – The Central Authority and/or the FAA of the State to which the child has been transferred shall supervise and monitor the placement of the child with the applicants, maintaining communication with the applicants from the time the child leaves the Philippines up to the time adoption is finalized.

The FAA shall be responsible for the pre-adoptive placement, care and family counseling of the child for at least six months from his/her arrival in the residence of the applicant/s, when applicable. During the pre-adoptive placement, the FAA shall furnish the Board with quarterly reports on the child’s health, psycho-social adjustment, and relationship with the applicant/s. The report shall also include updated information regarding the applicants’ personal circumstances, if any. The Board shall furnish the child’s CCA a copy of the reports.

Relative adoptions are subject to the same requirements under this Section.

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SEC. 46. *Emergency Intervention and Report.* – During the trial custody period, the Central Authority and/or the FAA shall immediately notify the Board if any serious ailment, injury or abuse is suffered by the child from the adoptive parent(s) or from other household members or the adoptive parent/s suffer from any serious ailment or injury that will make the adoption untenable.

The Central Authority and/or the FAA shall take the following measures to protect the child:

- (a) Medical/psychological interventions;
- (b) Emergency foster care; and
- (c) Respite care.

A report shall be submitted to the Board within 72 hours, to include the nature of the injury and the interventions provided.

In the event that all efforts to restore the parent-child relationship between the child and the applicant/s fail, Sections 48 and 49 of these Rules shall apply.

SEC. 47. *Disruption and Termination of Placement.* – In the event of serious damage in the relationship between the child and the applicant/s where the continued placement of the child is not in his/her best interests, the Central Authority and/or the FAA shall take the necessary measures to protect the child, in particular, to cause the child to be withdrawn from the applicant/s and to arrange for his/her temporary care.

The Central Authority and/or FAA shall exhaust all means to remove the cause of the unsatisfactory relationship which impedes or prevents the creation of a mutually satisfactory adoptive relationship. A complete report should be immediately forwarded to the Board with actions taken as well as recommendations and appropriate plans. Based on the report, the Board may terminate the pre-adoptive relationship.

In every instance, the collaboration between and among the Central Authority and/or the FAA and the Board shall be carried out to ensure the protection of the child.

SEC. 48. *New Placement for Child.* – In the event of termination of the pre-adoptive relationship, the Board shall identify from the Roster of Approved Applicants a suitable family with whom to place the child. The Central Authority and/or the FAA may also propose a replacement family whose application shall be filed for the approval of the Board. No adoption shall take place until after the Board has approved the application of such replacement family.

Taking into consideration the age and degree of maturity of the child, he or she shall be consulted and, when appropriate, his or her consent shall be obtained.

In the entrustment of the child to a replacement family, Section 39 and Sections 44-46 of these Rules shall apply.

A foster family who eventually decides to adopt the child under its care shall comply with the requirements of Sections 26-30 and Sections 34-36 of these Rules.

SEC. 49. *Repatriation of the Child.* – If the Board, in coordination with the Central Authority and/or the FAA is unable to find a suitable replacement family for the child within a reasonable period after the termination of the pre-adoptive relationship, the Board, as a last resort, shall arrange for the child's repatriation. The current prospective adoptive parents through the CA/FAA shall shoulder the cost of the child's repatriation. The Board shall inform the Department, the Child Caring/Placing Agency concerned and the Department of Foreign Affairs of the decision to repatriate the child.

SEC. 50. *Consent to Adoption.* – If a satisfactory pre-adoptive relationship is formed between the applicant/s and the child, the Board shall transmit an Affidavit of Consent to the Adoption executed by the Department to the Central Authority and/or the FAA within 15 days after receipt of the last post placement report.

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SEC. 51. *Filing of Petition for Adoption.* – The Central Authority and/or the FAA shall ensure that the applicant/s file the appropriate petition for the adoption of the child to the proper court or tribunal or agency in accordance with their national law.

SEC. 52. *Decree of Adoption.* – A copy of the final Decree of Adoption or its equivalent, including the Certificate of Citizenship/Naturalization, whenever applicable, shall be transmitted by the Central Authority and/or the FAA to the Board within one month after its issuance. The Board shall require the recording of the final judgment in the appropriate Philippine Civil Registry.

SEC. 53. *Dismissal of Petition for Adoption.* – In case of dismissal or disapproval of the petition for adoption by the foreign tribunal or agency filed by the applicant, the procedures under Sections 48, 49 and 50 shall apply.

SEC. 54. *Post Adoption Services.* – The Board shall allocate funds for Post Adoption Services and Research. It shall also establish guidelines to cover this program.

ARTICLE IX CONFIDENTIALITY

SECTION 55. *Records.* – All records relating to adoption cases and proceedings shall be kept confidential. No information thereof shall be released without written authority from the Board or from any of the following:

- (a) The adopted person of legal age;
- (b) The guardian of the adopted person if still a minor or under guardianship;
- (c) The adopted person's duly authorized representative;
- (d) The court or proper public official whenever necessary in an administrative, judicial or other official proceeding to determine the identity of the parent or parents or of the circumstances surrounding the birth of the adopted person; or
- (e) The nearest of kin, *e.g.*, spouse, adoptive parent(s), direct descendant(s), etc. in case of the death of the adopted person.

SEC. 56. *Preservation of Information.* – The Board shall ensure that information held by them concerning the origin of the adopted person, in particular the identity of his/her biological parents, as well as his or her medical history is preserved for life.

The Central Authority, the Competent Authority of a Contracting State, the FAAs and the Board shall ensure that the adopted person or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

ARTICLE X PENALTIES

SECTION 57. *Penalties.* – Any violation of the provisions of RA 8043 and/or these Implementing Rules and Regulations shall be penalized in accordance with Article IV Sections 16 and 17 of the Act.

An adoption shall be presumed illegal if:

- (a) The consent for an adoption was acquired through, or attended by coercion, fraud, or improper material inducement;
- (b) There is no authority from the Board to effect adoption; or
- (c) If the child to be adopted is subjected or exposed to danger, abuse and exploitation.

ARTICLE XI
FINAL PROVISIONS

SECTION 58. *Interpretation of the Provisions of the Rules.* – Any doubt or vagueness in the provisions of these Rules shall be interpreted in consideration of the best interests of the child.

SEC. 59. *Repealing Clause.* – These Rules shall supersede any other rules and regulations on the Inter-Country Adoption of Filipino Children.

SEC. 60. *Separability Clause.* – The declaration of invalidity of any provision of these Rules or part thereof shall not affect the validity of the remaining provisions.

SEC. 61. *Effectivity Clause.* – These Amended Rules shall take effect 15 days after its publication in two newspapers of general circulation.

Approved on March 13 in the year of the Lord Two Thousand and Seven.

REPUBLIC ACT No. 8353
AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A
CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT No. 3815, AS AMENDED,
OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES
Approved on September 30, 1997

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 Anti-Rape Law of 1997.*”

SEC. 2. Rape as a Crime Against Persons. – The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. Accordingly, there shall be incorporated into Title Eight of the same Code a new chapter to be known as Chapter Three on Rape, to read as follows:

CHAPTER THREE

RAPE

ARTICLE 266-A. Rape; When And How Committed. – Rape is committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority; and
 - d) When the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present.
- 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

ART. 266-B. Penalty. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1) When the victim is under 18 years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
- 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

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- 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;
- 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
- 5) When the victim is a child below seven years old;
- 6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
- 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
- 8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;
- 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
- 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion temporal*.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

Reclusion temporal shall be imposed if the rape is committed with any of the 10 aggravating/ qualifying circumstances mentioned in this article.

ART. 266-C. Effect of Pardon. – The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: *Provided*, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void *ab initio*.

ART. 266-D. Presumptions. – Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.

SEC. 3. Separability Clause. – If any part, Section, or provision of this Act is declared invalid or unconstitutional, the other parts hereof not affected thereby shall remain valid.

SEC. 4. Repealing Clause. – Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SEC. 5. Effectivity. – This Act shall take effect 15 days after completion of its publication in two newspapers of general circulation.

REPUBLIC ACT No. 8369
AN ACT ESTABLISHING FAMILY COURTS, GRANTING THEM EXCLUSIVE ORIGINAL JURISDICTION
OVER CHILD AND FAMILY CASES, AMENDING BATAS PAMBANSA BILANG 129, AS AMENDED,
OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980,
APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES
Approved on October 28, 1997

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

SECTION 1. Title. – This Act shall be known as the “*Family Courts Act of 1997.*”

SEC. 2. State and National Policies. – The State shall protect the rights and promote the welfare of children in keeping with the mandate of the Constitution and the precepts of the United Nations Convention on the Rights of the Child. The State shall provide a system of adjudication for youthful offenders which takes into account their peculiar circumstances.

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. The courts shall preserve the solidarity of the family, provide procedures for the reconciliation of spouses and the amicable settlement of family controversy.

SEC. 3. Establishment of Family Courts. – There shall be established a Family Court in every province and city in the country. In case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population.

SEC. 4. Qualification and Training of Family Court Judges. – Section 15 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:

SEC. 15.

(a) **Qualification.** – No person shall be appointed Regional Trial Judge or Presiding Judge of the Family Court unless he is a natural-born citizen of the Philippines, at least 35 years of age, and, for at least 10 years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.

(b) **Training of Family Court Judges.** –The Presiding Judge, as well as the court personnel of the Family Courts, shall undergo training and must have the experience and demonstrated ability in dealing with child family cases.

The Supreme Court shall provide a continuing education program on child and family laws, procedure and other related disciplines to judges and personnel of such courts.

SEC. 5. Jurisdiction of Family Courts. – The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

- a) Criminal cases where one or more of the accused is below 18 years of age but not less than nine years of age, or where one or more of the victims is a minor at the time of the commission of the offense: *Provided*, That if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the “Child and Youth Welfare Code”;
- b) Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;
- c) Petitions for adoption of children and the revocation thereof;

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- d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;
- e) Petitions for support and/or acknowledgment;
- f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the “Family Code of the Philippines”;
- g) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination or restoration of parental authority and other cases cognizable under PD No. 603, EO No. 56, (Series of 1986), and other related laws;
- h) Petitions for the constitution of the family home;
- i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;
- j) Violations of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” as amended by RA No. 7658; and
- k) Cases of domestic violence against:
 - 1) *Women* – which are acts of gender based violence that results, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman’s personhood, integrity and freedom of movement; and
 - 2) *Children* – which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused or batterer shall be subject to criminal proceedings and the corresponding penalties.

If any question involving any of the above matters should arise as an incident in any case pending in the regular courts, said incident shall be determined in that court.

SEC. 6. Use of Income. – All Family Courts shall be allowed the use of 10 percent of their income derived from filing and other court fees under Rule 141 of the Rules of Court for research and other operating expenses including capital outlay: *Provided*, That this benefit shall likewise be enjoyed by all courts of justice.

The Supreme Court shall promulgate the necessary guidelines to effectively implement the provisions of this Section.

SEC. 7. Special Provisional Remedies. – In cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused or defendant upon a verified application by the complainant or the victim for relief from abuse.

The court may order the temporary custody of children in all civil actions for their custody. The court may also order support *pendente lite*, including deduction from the salary and use of conjugal home and other properties in all civil actions for support.

SEC. 8. Supervision of Youth Detention Homes. – The judge of the Family Court shall have direct control and supervision of the youth detention home which the local government unit shall establish to separate the youth offenders from the adult criminals: *Provided, however*, That alternatives to detention and institutional care shall be made available to the accused including counseling, recognizance, bail, community continuum, or diversions from the justice system: *Provided, further*, That human rights of the accused are fully respected in a manner appropriate to their well-being.

SEC. 9. Social Services and Counseling Division. – Under the guidance of the Department of Social Welfare and Development (DSWD), a Social Services and Counseling Division (SSCD) shall be established in each judicial region as the Supreme Court shall deem necessary based in the number of juvenile and family cases existing in such jurisdiction. It shall provide appropriate social services to all juvenile and family cases filed with the court and recommend the proper social action. It shall also develop programs, formulate uniform policies and procedures, and provide technical supervision and monitoring of all SSCD in coordination with the judge.

Sec. 10. Social Services and Counseling Division Staff. – The SSCD shall have a staff composed of qualified social workers and other personnel with academic preparation in behavioral sciences to carry out the duties of conducting intake assessment, social case studies, casework and counseling, and other social services that may be needed in connection with cases filed with the court: *Provided, however,* That in adoption cases and in petitions for declaration of abandonment, the case studies may be prepared by social workers of duly licensed child caring or child placement agencies, or the DSWD. When warranted, the division shall recommend that the court avail itself of consultative services of psychiatrists, psychologists, and other qualified specialists presently employed in other departments of the government in connection with its cases.

The position of Social Work Adviser shall be created under the Office of the Court Administrator, who shall monitor and supervise the SSCD of the Regional Trial Court.

SEC. 11. Alternative Social Services. – In accordance with Section 17 of this Act, in areas where no Family Court has been established or no Regional Trial Court was designated by the Supreme Court due to the limited number of cases, the DSWD shall designate and assign, qualified, trained, and DSWD accredited social workers of the local government units to handle juvenile and family cases filed in the designated Regional Trial Court of the place.

SEC. 12. Privacy and Confidentiality of Proceedings. – All hearings and conciliation of the child and family cases shall be treated in a manner consistent with the promotion of the child’s and family’s dignity and worth, and shall respect their privacy at all stages of the proceedings. Records of the cases shall be dealt with utmost confidentiality and the identity of parties shall not be divulged unless necessary and with authority of the judge.

SEC. 13. Special Rules of Procedure. – The Supreme Court shall promulgate special rules of procedures for the transfer of cases to the new courts during the transition period and for the disposition of family cases with the best interests of the child and the protection of the family as primary consideration taking into account the United Nations Convention on the Rights of the Child.

SEC. 14. Appeals. – Decisions and orders of the court shall be appealed in the same manner and subject to the same conditions as appeals from the ordinary Regional Trial Courts.

SEC. 15. 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.

SEC. 16. Implementing Rules and Regulations. – The Supreme Court, in coordination with the DSWD, shall formulate the necessary rules and regulations for the effective implementation of the social aspects of this Act.

SEC. 17. Transitory Provisions. – Pending the establishment of such Family Courts, the Supreme Court shall designate from among the branches of the Regional Trial Court at least one Family Court in each of the cities of Manila, Quezon, Pasay, Caloocan, Makati, Pasig, Mandaluyong, Muntinlupa, Laoag, Baguio, Santiago, Dagupan, Olongapo, Cabanatuan, San Jose, Angeles, Cavite, Batangas, Lucena, Naga, Iriga, Legazpi, Roxas, Iloilo, Bacolod, Dumaguete, Tacloban, Cebu, Mandaue, Tagbilaran, Surigao, Butuan, Cagayan de Oro, Davao, General Santos, Oroquieta, Ozamis, Dipolog, Zamboanga, Pagadian, Iligan, and in such other places as the Supreme Court may deem necessary.

Additional cases other than those provided in Section 5 may be assigned to the Family Courts when their dockets permit: *Provided,* That such additional cases shall not be heard on the same day family cases are heard.

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In areas where there are no Family Courts, the cases referred to in Section 5 of this Act shall be adjudicated by the Regional Trial Court.

SEC. 18. *Separability Clause.* – In case any provision of this Act is declared unconstitutional, the other provisions shall remain in effect.

SEC. 19. *Repealing Clause.* – All other laws, decrees, executive orders, rules or regulations inconsistent herewith are hereby repealed, amended, or modified accordingly.

SEC. 20. *Effectivity.* – This Act shall take effect 15 days after its publication in at least two national papers of general circulation.

REPUBLIC ACT No. 8484
AN ACT REGULATING THE ISSUANCE AND USE OF ACCESS DEVICES, PROHIBITING FRAUDULENT ACTS
COMMITTED RELATIVE THERETO, PROVIDING PENALTIES AND FOR OTHER PURPOSES
Approved on February 11, 1998

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 “*Access Devices Regulation Act of 1998.*”

SEC. 2. Declaration of Policy. – The State recognizes the recent advances in technology and the widespread use of access devices in commercial transactions. Toward this end, the State shall protect the rights and define the liabilities of parties in such commercial transactions by regulating the issuance and use of access devices.

SEC. 3. Definition of Terms. – For purposes of this Act, the terms:

- (a) *Access Device* – means any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, good, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument);
- (b) *Counterfeit Access Device* – means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or counterfeit device;
- (c) *Unauthorized Access Device* – means any access device that is stolen, lost, expired, revoked, canceled, suspended, or obtained with intent to defraud;
- (d) *Access Device Fraudulently Applied for* – means any access device that was applied for or issued on account of the use of falsified document, false information, fictitious identities and addresses, or any form of false pretense or misrepresentation;
- (e) *Consumer* – means a natural person;
- (f) *Credit Card* – means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, goods, property, labor or services or any thing of value on credit;
- (g) *Device Making or Altering Equipment* – means any equipment, mechanism or impression designed or primarily used for making or altering or reencoding an access device or a counterfeit access device;
- (h) *Finance Charges* – represent the amount to be paid by the debtor incident to the extension of credit such as interest or discounts, collection fees, credit investigation fees, and other service charges;
- (i) *Open-end-credit plan* – means a consumer credit extended on an account pursuant to a plan under which:
 - 1) The creditor may permit the person to make purchase or obtain loans, from time to time, directly from the creditor or indirectly by use of credit card, or other service;
 - 2) The person has the privilege of paying the balance; or
 - 3) A finance charge may be computed by the creditor from time to time on an unpaid balance.
- (j) *Penalty Charges* – mean such amount, in addition to interest, imposed on the credit card holder for non-payment of an account within a prescribed period;
- (k) *Produce* – includes design, alter, authenticate, duplicate or assemble; and
- (l) *Trafficking* – means transferring, or otherwise disposing of, to another, or obtaining control of, with intent to transfer or dispose of.

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SEC. 4. Credit Card Application and Solicitation. – Any application to open a credit card account for any person under an open-end credit plan or a solicitation to open such an account, either by mail, telephone or other means, shall disclose in writing or orally, as the case may be, the following information:

- (a) Annual Percentage Rate
 - 1) Each annual percentage rate of interest on the amount of credit obtained by the credit card holder under such credit plan. Where an extension of credit is subject to a variable rate, the fact that the rate is variable, and the annual percentage rate in effect at the time of the mailing.
 - 2) Where more than one rate applies, the range of balances to which each rate applies.
- (b) Annual and other Fees
 - 1) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of a credit card, including any account maintenance fee or any other charge imposed based on activity or inactivity for the account during the billing cycle.
 - 2) Any minimum finance charge imposed for each period during which any extension of credit which is subject to a finance charge is outstanding.
 - 3) Any transaction charge imposed in connection with use of the card to purchase goods or services.
 - 4) Any fee, penalty or surcharge imposed for the delay in payment of an account.
- (c) Balance Calculation Method – the name or a detailed explanation of the balance calculation method used in determining the balance upon which the finance charge is computed.
- (d) Cash Advance Fee – any fee imposed for an extension of credit in the form of cash.
- (e) Over-the-Limit-Fee – any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such amount: *Provided, however,* That in case the application or solicitation to open a credit card account for any person under an open-end consumer credit plan be made through catalogs, magazines, or other publications, the following additional information shall be disclosed:
 - 1) A statement, in a conspicuous and prominent location on the application or solicitation, that:
 - i) The information is accurate as of the date the application or solicitation was printed;
 - ii) The information contained in the application or solicitation is subject to change after such date;
 - iii) The applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;
 - (2) The date the application or solicitation was printed; and
 - (3) In a conspicuous and prominent location on the application or solicitation, a toll free telephone number or mailing address which the applicant may contact to obtain any change in the information provided in the application or solicitation since it was printed.

SEC. 5. Computations. – In addition to the foregoing, a credit card issuer must, to the extent practicable, provide a detailed explanation and a clear illustration of the manner by which all charges and fees are computed.

SEC. 6. Exceptions. – The disclosures required under Section 4 of this Act may be omitted in any telephone solicitation or application if the credit card issuer:

- (a) Does not impose any fee in connection with paragraph (b)(1), Section 4 of this Act;
- (b) Does not impose any fee in connection with telephone solicitation unless the consumer signifies acceptance by using the card;
- (c) Discloses clearly the information described in Section 4 of this Act in writing within 30 days after the consumer requests the card, but in no event later than the date of delivery of the card; and

- (d) Discloses clearly that the consumer is not obligated to accept the card or account and the consumer will not be obligated to pay any fees or charges disclosed unless the consumer elects to accept the card or account by using the card.

SEC. 7. Disclosure Prior to Renewal. – Except in telephone solicitations a card issuer that imposes any fee described in Section 4 shall transmit to a consumer’s credit card account a clear and conspicuous disclosure of:

- (a) The date by which, the month by which, or the billing period at the close of which, the account will expire if not renewed;
- (b) The information described in Section 4 which shall be transmitted to a consumer at least 30 days prior to the scheduled renewal date of the consumer’s credit card account;
- (c) The information described in Section 4 (a) (1) which shall be transmitted to a consumer’s credit card account; and
- (d) The method by which the consumer may terminate continued credit availability under the account: *Provided*, That the disclosures required by this section must be made prior to posting a fee described in Section 4 (b) (1) to the account, or with the periodic billing statement first disclosing that the fee has been posted to the account subject to the condition that the consumer is given 30 day period to avoid payment of the fee or to have the fee recredited to the account in any case where the consumer does not wish to continue the availability of the credit.

SEC. 8. Failure to Disclose. – Credit card companies which shall fail to disclose the information required under Sections 4, 5 and 7 of this Act, after due notice and hearing, shall be subject to suspension or cancellation of their authority to issue credit cards by the Bangko Sentral ng Pilipinas, Securities and Exchange Commission and such other government agencies.

SEC. 9. Prohibited Acts. – The following acts shall constitute access device fraud and are hereby declared to be unlawful:

- (a) Producing, using, trafficking in one or more counterfeit access devices;
- (b) Trafficking in one or more unauthorized access devices or access devices fraudulently applied for;
- (c) Using, with intent to defraud, an unauthorized access device;
- (d) Using an access device fraudulently applied for;
- (e) Possessing one or more counterfeit access devices or access devices fraudulently applied for;
- (f) Producing, trafficking in, having control or custody of, or possessing device-making or altering equipment without being in the business or employment, which lawfully deals with the manufacture, issuance, or distribution of such equipment;
- (g) Inducing, enticing, permitting or in any manner allowing another, for consideration or otherwise to produce, use, traffic in counterfeit access devices, unauthorized access devices or access devices fraudulently applied for;
- (h) Multiple imprinting on more than one transaction record, sales slip or similar document, thereby making it appear that the device holder has entered into a transaction other than those which said device holder had lawfully contracted for, or submitting, without being an affiliated merchant, an order to collect from the issuer of the access device, such extra sales slip through an affiliated merchant who connives therewith, or, under false pretenses of being an affiliated merchant, present for collection such sales slips, and similar documents;
- (i) Disclosing any information imprinted on the access device, such as, but not limited to, the account number or name or address of the device holder, without the latter’s authority or permission;

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- (j) Obtaining money or anything of value through the use of an access device, with intent to defraud or with intent to gain and fleeing thereafter;
- (k) Having in one's possession, without authority from the owner of the access device or the access device company, an access device, or any material, such as slips, carbon paper, or any other medium, on which the access device is written, printed, embossed, or otherwise indicated;
- (l) Writing or causing to be written on sales slips, approval numbers from the issuer of the access device of the fact of approval, where in fact no such approval was given, or where, if given, what is written is deliberately different from the approval actually given;
- (m) Making any alteration, without the access device holder's authority, of any amount or other information written on the sales slip;
- (n) Effecting transaction, with one or more access devices issued to another person or persons, to receive payment or any other thing of value;
- (o) Without the authorization of the issuer of the access device, soliciting a person for the purpose of:
 - 1) Offering an access device; or
 - 2) Selling information regarding or an application to obtain an access device; or
- (p) Without the authorization of the credit card system member or its agent, causing or arranging for another person to present to the member or its agent, for payment, one or more evidence or records of transactions made by credit card.

Sec. 10. Penalties. – Any person committing any of the acts constituting access device fraud enumerated in the immediately preceding section shall be punished with:

- (a) A fine of Ten Thousand Pesos (P10,000) or twice the value obtained by the offense, whichever is greater and imprisonment for not less than six years and not more than 10 years, in the case of an offense under Section 9 (b)-(e), and (g)-(p) which does not occur after a conviction for another offense under Section 9;
- (b) A fine of Ten Thousand Pesos (P10,000) or twice the value obtained by the offense, and imprisonment for not less than 10 years and for not more than 12 years, in the case of an offense under Section 9 (a), and (f) of the foregoing section, which does not occur after a conviction for another offense under Section 9; and
- (c) A fine of Ten Thousand Pesos (P10,000) or twice the value obtained by the offense, or imprisonment for not less than 12 years and not more than 20 years, or both, in the case of any offense under Section 9, which occurs after a conviction for another offense under said subsection, or an attempt to commit the same.

Sec. 11. Conspiracy to Commit Access Device Fraud. – If two or more persons conspire to commit any of the offenses listed in Section 9 and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in the case of the doing of the act, the accomplishment of which is the object of such conspiracy.

SEC. 12. Frustrated and Attempted Access Device Fraud. – Any person who performs all the acts of execution which would produce any of the unlawful acts enumerated in Section 9 of this Act, but which nevertheless does not produce it by reason of causes independent of the will of said person, shall be punished with $\frac{2}{3}$ of the fine and imprisonment provided for the consummated offenses listed in said section. Any person who commences the commission of any of the unlawful acts enumerated in Section 9 of this Act directly by overt acts and does not perform all the acts of execution which would produce the said acts by reason of some cause or accident other than said person's own spontaneous desistance, shall be punished with one-half of the fine and imprisonment provided for the consummated offenses listed in the said section.

Sec. 13. Accessory to Access Device Fraud. – Any person who, with intent to gain for himself or for another, buy, receives, possesses, keeps, acquires, conceals, sells, or disposes of, shall buy and sell, or in any manner deal in any

article, item, object or anything of value which he knows or should be known to him, to have been acquired through the use of counterfeit access device or an unauthorized access device or an access device known to him to have been fraudulently applied for, shall be considered as an accessory to an access device fraud and shall be punished with one-half of the fine and imprisonment provided for the applicable consummated offenses listed in Section 9 of this Act. Said person shall be prosecuted under this Act or under the Anti-Fencing Law of 1979 (Presidential Decree No. 1612) whichever imposes the longer prison term as penalty for the consummated offense.

SEC. 14. *Presumption and Prima Facie Evidence of Intent to Defraud.* – The mere possession, control or custody of:

- (a) An access device, without permission of the owner or without any lawful authority;
- (b) A counterfeit access device;
- (c) Access device fraudulently applied for;
- (d) Any device-making or altering equipment by any person whose business or employment does not lawfully deal with the manufacture, issuance, or distribution of access device;
- (e) An access device or medium on which an access device is written, not in the ordinary course of the possessor's trade or business; or
- (f) A genuine access device, not in the name of the possessor, or not in the ordinary course of the possessor's trade or business, shall be *prima facie* evidence that such device or equipment is intended to be used to defraud.

A cardholder who abandons or surreptitiously leaves the place of employment, business or residence stated in his application or credit card, without informing the credit card company of the place where he could actually be found, if at the time of such abandonment or surreptitious leaving, the outstanding and unpaid balance is past due for at least 90 days and is more than Ten Thousand Pesos (P10,000), shall be *prima facie* presumed to have used his credit card with intent to defraud.

SEC. 15. *Loss of Access Devices.* – In case of loss of an access device, the holder thereof must notify the issuer of the access device of the details and circumstances of such loss upon knowledge of the loss. Full compliance with such procedure would absolve the access device holder of any financial liability from fraudulent use of the access device from the time the loss or theft is reported to the issuer.

SEC. 16. *Reporting Requirements.* – All companies engaged in the business of issuing access devices, including banks, financing companies and other financial institutions issuing access devices, shall furnish annually, on or before the 31st of March of the succeeding year, a report to the Credit Card Association of the Philippines regarding access device frauds committed against the holders of such entities in the preceding calendar year, for consolidation and submission to the National Bureau of Investigation. Notwithstanding this requirement, banks, financing companies and other financial institutions, including their subsidiaries and affiliates, issuing access devices shall continue to be regulated and supervised by the Bangko Sentral ng Pilipinas while other companies issuing access devices shall continue to be regulated and supervised by the Securities and Exchange Commission.

SEC. 17. *Liability under the Revised Penal Code and Other Laws.* – Prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code or any other law.

SEC. 18. *Separability Clause.* – If any separable provision of this Act be declared unconstitutional, the remaining provisions shall continue to be in force.

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SEC. 19. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 20. *Effectivity Clause.* – This Act shall take effect 15 days after its publication in at least two newspapers of general circulation.

REPUBLIC ACT No. 8533
AN ACT AMENDING TITLE I, CHAPTER 3, ARTICLE 39 OF EXECUTIVE ORDER No. 209,
OTHERWISE KNOWN AS THE FAMILY CODE OF THE PHILIPPINES, NULLIFYING THE PRESCRIPTIVE PERIOD
FOR ACTION OR DEFENSES GROUNDED ON PSYCHOLOGICAL INCAPACITY
Approved on February 23, 1998

SECTION 1. Title I, Chapter 3, Article 39 of Executive Order No. 209, otherwise known as the Family Code of the Philippines, is hereby amended to read as follows:

TITLE I
MARRIAGE

Chapter 3
Void and Voidable Marriages

ARTICLE 39. The action or defense for the declaration of absolute nullity of a marriage shall not prescribe.

Sec. 2. Effectivity Clause. – This Act shall take effect after 15 days following its publication in the Official Gazette or in two newspapers of general circulation.

REPUBLIC ACT No. 8552
AN ACT ESTABLISHING THE RULES AND POLICIES ON THE
DOMESTIC ADOPTION OF FILIPINO CHILDREN AND FOR OTHER PURPOSES
Approved on February 25, 1998

ARTICLE I
GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known as the “*Domestic Adoption Act of 1998.*”

SEC. 2. Declaration of Policies.

- (a) It is hereby declared the policy of the State to ensure that every child remains under the care and custody of his/her parent(s) and be provided with love, care, understanding and security towards the full and harmonious development of his/her personality. Only when such efforts prove insufficient and no appropriate placement or adoption within the child’s extended family is available shall adoption by an unrelated person be considered.
- (b) In all matters relating to the care, custody and adoption of a child, his/her interest shall be the paramount consideration in accordance with the tenets set forth in the United Nations (UN) Convention on the Rights of the Child; UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally; and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. Toward this end, the State shall provide alternative protection and assistance through foster care or adoption for every child who is neglected, orphaned, or abandoned.
- (c) It shall also be a State policy to:
 - (i) Safeguard the biological parent(s) from making hurried decisions to relinquish his/her parental authority over his/her child;
 - (ii) Prevent the child from unnecessary separation from his/her biological parent(s);
 - (iii) Protect adoptive parent(s) from attempts to disturb his/her parental authority and custody over his/her adopted child.

Any voluntary or involuntary termination of parental authority shall be administratively or judicially declared so as to establish the status of the child as “legally available for adoption” and his/her custody transferred to the Department of Social Welfare and Development or to any duly licensed and accredited child-placing or child-caring agency, which entity shall be authorized to take steps for the permanent placement of the child;

- (iv) Conduct public information and educational campaigns to promote a positive environment for adoption;
- (v) Ensure that sufficient capacity exists within government and private sector agencies to handle adoption inquiries, process domestic adoption applications, and offer adoption-related services including, but not limited to, parent preparation and post-adoption education and counseling; and
- (vi) Encourage domestic adoption so as to preserve the child’s identity and culture in his/her native land, and only when this is not available shall intercountry adoption be considered as a last resort.

SEC. 3. Definition of Terms. – For purposes of this Act, the following terms shall be defined as:

- (a) *Child* is a person below 18 years of age.
- (b) *A child legally available for adoption* refers to a child who has been voluntarily or involuntarily committed to the Department or to a duly licensed and accredited child-placing or child-caring agency, freed of the parental authority of his/her biological parent(s) or guardian or adopter(s) in case of rescission of adoption.

- (c) *Voluntarily committed child* is one whose parent(s) knowingly and willingly relinquishes parental authority to the Department.
- (d) *Involuntarily committed child* is one whose parent(s), known or unknown, has been permanently and judicially deprived of parental authority due to abandonment; substantial, continuous, or repeated neglect; abuse; or incompetence to discharge parental responsibilities.
- (e) *Abandoned child* refers to one who has no proper parental care or guardianship or whose parent(s) has deserted him/her for a period of at least six continuous months and has been judicially declared as such.
- (f) *Supervised trial custody* is a period of time within which a social worker oversees the adjustment and emotional readiness of both adopter(s) and adoptee in stabilizing their filial relationship.
- (g) *Department* refers to the Department of Social Welfare and Development.
- (h) *Child-placing agency* is a duly licensed and accredited agency by the Department to provide comprehensive child welfare services including, but not limited to, receiving applications for adoption, evaluating the prospective adoptive parents, and preparing the adoption home study.
- (i) *Child-caring agency* is a duly licensed and accredited agency by the Department that provides 24-hour residential care services for abandoned, orphaned, neglected, or voluntarily committed children.
- (j) *Simulation of birth* is the tampering of the civil registry making it appear in the birth records that a certain child was born to a person who is not his/her biological mother, causing such child to lose his/her true identity and status.

ARTICLE II
PRE-ADOPTION SERVICES

SECTION 4. Counseling Services. – The Department shall provide the services of licensed social workers to the following:

- (a) *Biological Parent(s)* – Counseling shall be provided to the parent(s) before and after the birth of his/her child. No binding commitment to an adoption plan shall be permitted before the birth of his/her child. A period of six months shall be allowed for the biological parent(s) to reconsider any decision to relinquish his/her child for adoption before the decision becomes irrevocable. Counseling and rehabilitation services shall also be offered to the biological parent(s) after he/she has relinquished his/her child for adoption.

Steps shall be taken by the Department to ensure that no hurried decisions are made and all alternatives for the child’s future and the implications of each alternative have been provided.

- (b) *Prospective Adoptive Parent(s)* – Counseling sessions, adoption *fora* and seminars, among others, shall be provided to prospective adoptive parent(s) to resolve possible adoption issues and to prepare him/her for effective parenting.
- (c) *Prospective Adoptee* – Counseling sessions shall be provided to ensure that he/she understands the nature and effects of adoption and is able to express his/her views on adoption in accordance with his/her age and level of maturity.

SEC. 5. Location of Unknown Parent(s). – It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned.

SEC. 6. Support Services. – The Department shall develop a pre-adoption program which shall include, among others, the above mentioned services.

**ARTICLE III
ELIGIBILITY**

SECTION 7. *Who May Adopt.* – The following may adopt:

- (a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children, at least 16 years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family. The requirement of 16 year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent;
- (b) Any alien possessing the same qualifications as above stated for Filipino nationals: *Provided*, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: *Provided, further*, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:
 - (i) a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity; or
 - (ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or
 - (iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth degree of consanguinity or affinity of the Filipino spouse; or
- (c) The guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.
 - Husband and wife shall jointly adopt, except in the following cases:
 - (i) if one spouse seeks to adopt the legitimate son/daughter of the other; or
 - (ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: *Provided, however*, That the other spouse has signified his/her consent thereto; or
 - (iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

SEC. 8. *Who May Be Adopted.* – The following may be adopted:

- (a) Any person below 18 years of age who has been administratively or judicially declared available for adoption;
- (b) The legitimate son/daughter of one spouse by the other spouse;
- (c) An illegitimate son/daughter by a qualified adopter to improve his/her status to that of legitimacy;
- (d) A person of legal age if, prior to the adoption, said person has been consistently considered and treated by the adopter(s) as his/her own child since minority;
- (e) A child whose adoption has been previously rescinded; or
- (f) A child whose biological or adoptive parent(s) has died: *Provided*, That no proceedings shall be initiated within six months from the time of death of said parent(s).

SEC. 9. Whose Consent is Necessary to the Adoption. – After being properly counseled and informed of his/her right to give or withhold his/her approval of the adoption, the written consent of the following to the adoption is hereby required:

- (a) The adoptee, if 10 years of age or over;
- (b) The biological parent(s) of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child;
- (c) The legitimate and adopted sons/daughters, 10 years of age or over, of the adopter(s) and adoptee, if any;
- (d) The illegitimate sons/daughters, 10 years of age or over, of the adopter if living with said adopter and the latter's spouse, if any; and
- (e) The spouse, if any, of the person adopting or to be adopted.

ARTICLE IV PROCEDURE

SECTION 10. Hurried Decisions. – In all proceedings for adoption, the court shall require proof that the biological parent(s) has been properly counseled to prevent him/her from making hurried decisions caused by strain or anxiety to give up the child, and to sustain that all measures to strengthen the family have been exhausted and that any prolonged stay of the child in his/her home will be inimical to his/her welfare and interest.

SEC. 11. Case Study. – No petition for adoption shall be set for hearing unless a licensed social worker of the Department, the social service office of the local government unit, or any child-placing or child-caring agency has made a case study of the adoptee, his/her biological parent(s), as well as the adopter(s), and has submitted the report and recommendations on the matter to the court hearing such petition.

At the time of preparation of the adoptee's case study, the concerned social worker shall confirm with the Civil Registry the real identity and registered name of the adoptee. If the birth of the adoptee was not registered with the Civil Registry, it shall be the responsibility of the concerned social worker to ensure that the adoptee is registered.

The case study on the adoptee shall establish that he/she is legally available for adoption and that the documents to support this fact are valid and authentic. Further, the case study of the adopter(s) shall ascertain his/her genuine intentions and that the adoption is in the best interest of the child.

The Department shall intervene on behalf of the adoptee if it finds, after the conduct of the case studies, that the petition should be denied. The case studies and other relevant documents and records pertaining to the adoptee and the adoption shall be preserved by the Department.

SEC. 12. Supervised Trial Custody. – No petition for adoption shall be finally granted until the adopter(s) has been given by the court a supervised trial custody period for at least six months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the adopter(s).

The court may *motu proprio* or upon motion of any party reduce the trial period if it finds the same to be in the best interest of the adoptee, stating the reasons for the reduction of the period. However, for alien adopter(s), he/she must complete the six-month trial custody except for those enumerated in Sec. 7 (b)(i)(ii)(iii).

If the child is below seven years of age and is placed with the prospective adopter(s) through a pre-adoption placement authority issued by the Department, the prospective adopter(s) shall enjoy all the benefits to which biological parent(s) is entitled from the date the adoptee is placed with the prospective adopter(s).

SEC. 13. Decree of Adoption. – If, after the publication of the order of hearing has been complied with, and no opposition has been interposed to the petition, and after consideration of the case studies, the qualifications of

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the adopter(s), trial custody report and the evidence submitted, the court is convinced that the petitioners are qualified to adopt, and that the adoption would redound to the best interest of the adoptee, a decree of adoption shall be entered which shall be effective as of the date the original petition was filed. This provision shall also apply in case the petitioner(s) dies before the issuance of the decree of adoption to protect the interest of the adoptee. The decree shall state the name by which the child is to be known.

SEC. 14. *Civil Registry Record.* – An amended certificate of birth shall be issued by the Civil Registry, as required by the Rules of Court, attesting to the fact that the adoptee is the child of the adopter(s) by being registered with his/her surname. The original certificate of birth shall be stamped *cancelled* with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new birth certificate to be issued to the adoptee shall not bear any notation that it is an amended issue.

SEC. 15. *Confidential Nature of Proceedings and Records.* – All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the Department, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential.

If the court finds that the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption and will be for the best interest of the adoptee, the court may merit the necessary information to be released, restricting the purposes for which it may be used.

ARTICLE V EFFECTS OF ADOPTION

SECTION 16. *Parental Authority.* – Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

SEC. 17. *Legitimacy.* – The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

SEC. 18. *Succession.* – In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

ARTICLE VI RESCISSION OF ADOPTION

SECTION 19. *Grounds for Rescission of Adoption.* – Upon petition of the adoptee, with the assistance of the Department if a minor or if over 18 years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.

Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

SEC. 20. *Effects of Rescission.* – If the petition is granted, the parental authority of the adoptee's biological parent(s), if known, or the legal custody of the Department shall be restored if the adoptee is still a minor or incapacitated. The reciprocal rights and obligations of the adopter(s) and the adoptee to each other shall be extinguished.

The court shall order the Civil Registrar to cancel the amended certificate of birth of the adoptee and restore his/her original birth certificate.

Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected.

All the foregoing effects of rescission of adoption shall be without prejudice to the penalties imposable under the Penal Code if the criminal acts are properly proven.

ARTICLE VII VIOLATIONS AND PENALTIES

SECTION 21. *Violations and Penalties.*

- (a) The penalty of imprisonment ranging from six years and one day to 12 years and/or a fine not less than Fifty Thousand Pesos (P50,000), but not more than Two Hundred Thousand Pesos (P200,000) at the discretion of the court shall be imposed on any person who shall commit any of the following acts:
- (i) obtaining consent for an adoption through coercion, undue influence, fraud, improper material inducement, or other similar acts;
 - (ii) non-compliance with the procedures and safeguards provided by the law for adoption; or
 - (iii) subjecting or exposing the child to be adopted to danger, abuse, or exploitation.
- (b) Any person who shall cause the fictitious registration of the birth of a child under the name(s) of a person(s) who is not his/her biological parent(s) shall be guilty of simulation of birth, and shall be punished by *prision mayor* in its medium period and a fine not exceeding Fifty Thousand Pesos (P50,000).

Any physician or nurse or hospital personnel who, in violation of his/her oath of office, shall cooperate in the execution of the abovementioned crime shall suffer the penalties herein prescribed and also the penalty of permanent disqualification.

Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents, and communications of adoption applications, cases, and processes shall suffer the penalty of imprisonment ranging from one year and one day to two years, and/or a fine of not less than Five Thousand Pesos (P5,000) but not more than Ten Thousand Pesos (P10,000), at the discretion of the court.

A penalty lower by two degrees than that prescribed for the consummated offense under this Article shall be imposed upon the principals of the attempt to commit any of the acts herein enumerated.

Acts punishable under this Article, when committed by a syndicate or where it involves two or more children shall be considered as an offense constituting child trafficking and shall merit the penalty of *reclusion perpetua*.

Acts punishable under this Article are deemed committed by a syndicate if carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this Article. Penalties as are herein provided, shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

When the offender is an alien, he/she shall be deported immediately after service of sentence and perpetually excluded from entry to the country.

Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with existing civil service laws, rules and regulations: *Provided*, That upon the filing of a case, either administrative or criminal, said government official, employee, or functionary concerned shall automatically suffer suspension until the resolution of the case.

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SEC. 22. Rectification of Simulated Births. – A person who has, prior to the effectivity of this Act, simulated the birth of a child shall not be punished for such act: *Provided*, That the simulation of birth was made for the best interest of the child and that he/she has been consistently considered and treated by that person as his/her own son/daughter: *Provided, further*, That the application for correction of the birth registration and petition for adoption shall be filed within five years from the effectivity of this Act and completed thereafter: *Provided, finally*, That such person complies with the procedure as specified in Article IV of this Act and other requirements as determined by the Department.

ARTICLE VIII FINAL PROVISIONS

SECTION 23. Adoption Resources and Referral Office. – There shall be established an Adoption Resources and Referral Office under the Department with the following functions: (a) monitor the existence, number, and flow of children legally available for adoption and prospective adopter(s) so as to facilitate their matching; (b) maintain a nationwide information and educational campaign on domestic adoption; (c) keep records of adoption proceedings; (d) generate resources to help child-caring and child-placing agencies and foster homes maintain viability; and (e) do policy research in collaboration with the Intercountry Adoption Board and other concerned agencies. The office shall be manned by adoption experts from the public and private sectors.

SEC. 24. Implementing Rules and Regulations. – Within six months from the promulgation of this Act, the Department, with the Council for the Welfare of Children, the Office of Civil Registry General, the Department of Justice, Office of the Solicitor General, and two private individuals representing child-placing and child-caring agencies shall formulate the necessary guidelines to make the provisions of this Act operative.

SEC. 25. Appropriations. – Such sum as may be necessary for the implementation of the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 26. Repealing Clause. – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 27. Separability Clause. – If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 28. Effectivity Clause. – This Act shall take effect 15 days following its complete publication in any newspaper of general circulation or in the Official Gazette.

REPUBLIC ACT No. 8972
AN ACT PROVIDING FOR BENEFITS AND PRIVILEGES TO SOLO PARENTS AND THEIR CHILDREN,
APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES
Approved on November 7, 2000

SECTION 1. Title. – This Act shall be known as the “*Solo Parents’ Welfare Act of 2000.*”

SEC. 2. Declaration of Policy. – It is the policy of the State to promote the family as the foundation of the nation, strengthen its solidarity and ensure its total development. Towards this end, it shall develop a comprehensive program of services for solo parents and their children to be carried out by the Department of Social Welfare and Development (DSWD), the Department of Health (DOH), the Department of Education, Culture and Sports (DECS), the Department of the Interior and Local Government (DILG), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), the National Housing Authority (NHA), the Department of Labor and Employment (DOLE) and other related government and nongovernment agencies.

SEC. 3. Definition of Terms. – Whenever used in this Act, the following terms shall mean as follows:

(a) *Solo parent* – any individual who falls under any of the following categories:

- (1) A woman who gives birth as a result of rape and other crimes against chastity even without a final conviction of the offender: *Provided*, That the mother keeps and raises the child;
- (2) Parent left solo or alone with the responsibility of parenthood due to death of spouse;
- (3) Parent left solo or alone with the responsibility of parenthood while the spouse is detained or is serving sentence for a criminal conviction for at least one year;
- (4) Parent left solo or alone with the responsibility of parenthood due to physical and/or mental incapacity of spouse as certified by a public medical practitioner;
- (5) Parent left solo or alone with the responsibility of parenthood due to legal separation or *de facto* separation from spouse for at least one year, as long as he/she is entrusted with the custody of the children;
- (6) Parent left solo or alone with the responsibility of parenthood due to declaration of nullity or annulment of marriage as decreed by a court or by a church as long as he/she is entrusted with the custody of the children;
- (7) Parent left solo or alone with the responsibility of parenthood due to abandonment of spouse for at least one year;
- (8) Unmarried mother/father who has preferred to keep and rear her/his children instead of having others care for them or give them up to a welfare institution;
- (9) Any other person who solely provides parental care and support to a child or children;
- (10) Any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance or prolonged absence of the parents or solo parent.

A change in the status or circumstance of the parent claiming benefits under this Act, such that he/she is no longer left alone with the responsibility of parenthood, shall terminate his/her eligibility for these benefits.

(b) *Children* refer to those living with and dependent upon the solo parent for support who are unmarried, unemployed and not more than 18 years of age, or even over 18 years but are incapable of self-support because of mental and/or physical defect/disability.

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- (c) *Parental responsibility* with respect to their minor children shall refer to the rights and duties of the parents as defined in Article 220 of Executive Order No. 209, as amended, otherwise known as the “*Family Code of the Philippines*.”
- (d) *Parental leave* shall mean leave benefits granted to a solo parent to enable him/her to perform parental duties and responsibilities where physical presence is required.
- (e) *Flexible work schedule* is the right granted to a solo parent employee to vary his/her arrival and departure time without affecting the core work hours as defined by the employer.

SEC. 4. Criteria for Support. – Any solo parent whose income in the place of domicile falls below the poverty threshold as set by the National Economic and Development Authority (NEDA) and subject to the assessment of the DSWD worker in the area shall be eligible for assistance: *Provided, however,* That any solo parent whose income is above the poverty threshold shall enjoy the benefits mentioned in Sections 6, 7 and 8 of this Act.

SEC. 5. Comprehensive Package of Social Development and Welfare Services. – A comprehensive package of social development and welfare services for solo parents and their families will be developed by the DSWD, DOH, DECS, CHED, TESDA, DOLE, NHA and DILG, in coordination with local government units and a nongovernmental organization with proven track record in providing services for solo parents.

The DSWD shall coordinate with concerned agencies the implementation of the comprehensive package of social development and welfare services for solo parents and their families. The package will initially include:

- (a) Livelihood development services which include trainings on livelihood skills, basic business management, value orientation and the provision of seed capital or job placement.
- (b) Counseling services which include individual, peer group or family counseling. This will focus on the resolution of personal relationship and role conflicts.
- (c) Parent effectiveness services which include the provision and expansion of knowledge and skills of the solo parent on early childhood development, behavior management, health care, rights and duties of parents and children.
- (d) Critical incidence stress debriefing which includes preventive stress management strategy designed to assist solo parents in coping with crisis situations and cases of abuse.
- (e) Special projects for individuals in need of protection which include temporary shelter, counseling, legal assistance, medical care, self-concept or ego-building, crisis management and spiritual enrichment.

SEC. 6. Flexible Work Schedule. – The employer shall provide for a flexible working schedule for solo parents: *Provided,* That the same shall not affect individual and company productivity: *Provided, further,* That any employer may request exemption from the above requirements from the DOLE on certain meritorious grounds.

SEC. 7. Work Discrimination. – No employer shall discriminate against any solo parent employee with respect to terms and conditions of employment on account of his/her status.

SEC. 8. Parental Leave. – In addition to leave privileges under existing laws, parental leave of not more than seven working days every year shall be granted to any solo parent employee who has rendered service of at least one year.

SEC. 9. Educational Benefits. – The DECS, CHED and TESDA shall provide the following benefits and privileges:

- (1) Scholarship programs for qualified solo parents and their children in institutions of basic, tertiary and technical/skills education; and
- (2) Nonformal education programs appropriate for solo parents and their children.

The DECS, CHED and TESDA shall promulgate rules and regulations for the proper implementation of this program.

SEC. 10. *Housing Benefits.* – Solo parents shall be given allocation in housing projects and shall be provided with liberal terms of payment on said government low-cost housing projects in accordance with housing law provisions prioritizing applicants below the poverty line as declared by the NEDA.

SEC. 11. *Medical Assistance.* – The DOH shall develop a comprehensive health care program for solo parents and their children. The program shall be implemented by the DOH through their retained hospitals and medical centers and the local government units (LGUs) through their provincial/district/city/municipal hospitals and rural health units (RHUs).

SEC. 12. *Additional Powers and Functions of the DSWD.* – The DSWD shall perform the following additional powers and functions relative to the welfare of solo parents and their families:

- (a) Conduct research necessary to: (1) develop a new body of knowledge on solo parents; (2) define executive and legislative measures needed to promote and protect the interest of solo parents and their children; and (3) assess the effectiveness of programs designed for disadvantaged solo parents and their children;
- (b) Coordinate the activities of various governmental and nongovernmental organizations engaged in promoting and protecting the interests of solo parents and their children; and
- (c) Monitor the implementation of the provisions of this Act and suggest mechanisms by which such provisions are effectively implemented.

SEC. 13. *Implementing Rules and Regulations.* – An interagency committee headed by the DSWD, in coordination with the DOH, DECS, CHED, TESDA, DOLE, NHA, and DILG is hereby established which shall formulate, within 90 days upon the effectivity of this Act, the implementing rules and regulations in consultation with the local government units, nongovernment organizations and people's organizations.

SEC. 14. *Appropriations.* – The amount necessary to carry out the provisions of this Act shall be included in the budget of concerned government agencies in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 15. *Repealing Clause.* – All laws, decrees, executive orders, administrative orders or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 16. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall continue to be in full force and effect.

SEC. 17. *Effectivity Clause.* – This Act shall take effect 15 days following its complete publication in the Official Gazette or in at least two newspapers of general circulation.

REPUBLIC ACT No. 9208

AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES

Approved on May 26, 2003

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

SECTION 1. Title. – This Act shall be known as the “*Anti-Trafficking in Persons Act of 2003.*”

SEC. 2. Declaration of Policy. – It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary mitigation and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families, United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

SEC. 3. Definition of Terms. – As used in this Act.

(a) *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as “trafficking in persons” even if it does not involve any of the means set forth in the preceding paragraph.

(b) *Child* – refers to a person below 18 years of age or one who is over 18 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) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

(d) *Forced Labor and Slavery* – refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception.

(e) *Sex Tourism* – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.

- (f) *Sexual Exploitation* – refers to participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force or abuse of authority, debt bondage, fraud or through abuse of a victim’s vulnerability.
- (g) *Debt Bondage* – refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.
- (h) *Pornography* – refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.
- (i) *Council* – shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

SEC. 4. Acts of Trafficking in Persons. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

- (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
- (e) To maintain or hire a person to engage in prostitution or pornography;
- (f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and
- (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

SEC. 5. Acts that Promote Trafficking in Persons. – The following acts which promote or facilitate trafficking in persons, shall be unlawful:

- (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
- (b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
- (c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;

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- (d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
- (e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;
- (f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and
- (g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

SEC. 6. *Qualified Trafficking in Persons.* – The following are considered as qualified trafficking:

- (a) When the trafficked person is a child;
- (b) When the adoption is effected through Republic Act No. 8043, otherwise known as the “Inter-Country Adoption Act of 1995” and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three or more persons conspiring or confederating with another. It is deemed committed in large scale if committed against three or more persons, individually or as a group;
- (d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
- (e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- (f) When the offender is a member of the military or law enforcement agencies; and
- (g) When by reason or on occasion of the act of trafficking in persons the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

SEC. 7. *Confidentiality.* – At any stage of the investigation, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the trafficked person and the accused. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public.

In cases when prosecution or trial is conducted behind closed doors, it shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or information technology to cause publicity of any case of trafficking in persons.

SEC. 8. *Prosecution of Cases.* – Any person who has personal knowledge of the commission of any offense under this Act, the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.

SEC. 9. Venue. – A criminal action arising from violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the trafficked person actually resides at the time of the commission of the offense: *Provided*, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

SEC. 10. Penalties and Sanctions. – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of 20 years and a fine of not less than One Million Pesos (P1 million) but not more than Two Million Pesos (P2 million);
- (b) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of 15 years and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million);
- (c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two Million Pesos (P2 million) but not more than Five Million Pesos (P5 million);
- (d) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six years and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million);
- (e) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;
- (f) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;
- (g) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;
- (h) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall likewise be forfeited; and
- (i) Conviction by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

SEC. 11. Use of Trafficked Persons. – Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

- (a) *First offense* – six months of community service as may be determined by the court and a fine of Fifty Thousand Pesos (P50,000); and
- (b) *Second and subsequent offenses* – imprisonment of one year and a fine of One Hundred Thousand Pesos (P100,000).

SEC. 12. Prescribed Period. – Trafficking cases under this Act shall prescribe in 10 years: *Provided, however*; That trafficking cases committed by a syndicate or in a large scale as defined under Section 6 shall prescribe in 20 years.

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The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage and shall be interrupted by the filing of the complaint or information and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

SEC. 13. Exemption from Filing Fees. – When the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from the payment of filing fees.

SEC. 14. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons. – In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act: *Provided, however;* That all awards for damages shall be taken from the personal and separate properties of the offender; *Provided, further;* That if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

SEC. 15. Trust Fund. – All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 hereof shall accrue to a Trust Fund to be administered and managed by the Council to be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the mainstream of society. Such programs shall include, but not limited to, the following:

- (a) Provision for mandatory services set forth in Section 23 of this Act;
- (b) Sponsorship of a national research program on trafficking and establishment of a data collection system for monitoring and evaluation purposes;
- (c) Provision of necessary technical and material support services to appropriate government agencies and non-government organizations (NGOs);
- (d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, NGO and international organizations; and
- (e) Promotion of information and education campaign on trafficking.

SEC. 16. Programs that Address Trafficking in Persons. – The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:

- (a) *Department of Foreign Affairs (DFA)* – shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs.

The DFA shall take necessary measures for the efficient implementation of the Machine Readable Passports to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

It shall establish and implement a pre-marriage, on-site and pre-departure counseling program on intermarriages.

- (b) *Department of Social Welfare and Development (DSWD)* – shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community.
- (c) *Department of Labor and Employment (DOLE)* – shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.
- (d) *Department of Justice (DOJ)* – shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.
- (e) *National Commission on the Role of Filipino Women (NCRFW)* – shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women’s issues.
- (f) *Bureau of Immigration (BI)* – shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.
- (g) *Philippine National Police (PNP)* – shall be the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. It shall closely coordinate with various law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. It shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.
- (h) *Philippine Overseas Employment Administration (POEA)* – shall implement an effective pre-employment orientation seminars and pre-departure counseling programs to applicants for overseas employment. It shall likewise formulate a system of providing free legal assistance to trafficked persons.
- (i) *Department of the Interior and Local Government (DILG)* – shall institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons.
- (j) *Local Government Units (LGUs)* – shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with DILG, Philippine Information Agency (PIA), Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community-based initiatives which address the trafficking in persons.

In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people’s organizations (POs), civic organizations and other volunteer groups.

SEC. 17. Legal Protection to Trafficked Persons. – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

SEC. 18. Preferential Entitlement Under the Witness Protection Program. – Any provision of Republic Act No. 6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein.

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SEC. 19. *Trafficked Persons Who are Foreign Nationals.* – Subject to the guidelines issued by the Council, trafficked persons in the Philippines who are nationals of a foreign country shall also be entitled to appropriate protection, assistance and services available to trafficked persons under this Act; *Provided*, That they shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution of offenders.

SEC. 20. *Inter-Agency Council Against Trafficking.* – There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

- (a) Secretary, Department of Foreign Affairs;
- (b) Secretary, Department of Labor and Employment;
- (c) Administrator, Philippine Overseas Employment Administration;
- (d) Commissioner, Bureau of Immigration;
- (e) Director-General, Philippine National Police;
- (f) Chairperson, National Commission on the Role of Filipino Women;
- (g) Three representatives from NGOs, who shall be composed of one representative each from among the sectors representing women, overseas Filipino workers (OFWs) and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three years.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

SEC. 21. *Functions of the Council.* – The Council shall have the following powers and functions:

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- (h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;
- (i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
- (j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” with data on cases

of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;

- (k) Develop the mechanism to ensure the timely, coordinated and effective response to cases of trafficking in persons;
- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- (m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;
- (n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- (p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

SEC. 22. *Secretariat to the Council.* – The Department of Justice shall establish the necessary Secretariat for the Council.

SEC. 23. *Mandatory Services to Trafficked Persons.* – To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies shall make available the following services to trafficked persons:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services which shall include information about the victims’ rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person;
- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance to a trafficked child.

Sustained supervision and follow through mechanism that will track the progress of recovery, rehabilitation and reintegration of the trafficked persons shall be adopted and carried out.

SEC. 24. *Other Services for Trafficked Persons.*

- (a) *Legal Assistance.* – Trafficked persons shall be considered under the category “Overseas Filipino in Distress” and may avail of the legal assistance created by Republic Act No. 8042, subject to the guidelines as provided by law.
- (b) *Overseas Filipino Resource Centers.* – The services available to overseas Filipinos as provided for by Republic Act No. 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.
- (c) *The Country Team Approach.* – The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity and fundamental rights are concerned.

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SEC. 25. *Repatriation of Trafficked Persons.* – The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of the trafficked persons shall expose the victims to greater risks, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

SEC. 26. *Extradition.* – The DOJ, in consultation with DFA, shall endeavor to include offenses of trafficking in persons among extraditable offenses.

SEC. 27. *Reporting Requirements.* – The Council shall submit to the President of the Philippines and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act.

SEC. 28. *Funding.* – The heads of the departments and agencies concerned shall immediately include in their programs and issue such rules and regulations to implement the provisions of this Act, the funding of which shall be included in the annual General Appropriations Act.

SEC. 29. *Implementing Rules and Regulations.* – The Council shall promulgate the necessary implementing rules and regulations within 60 days from the effectivity of this Act.

SEC. 30. *Non-restriction of Freedom of Speech and of Association, Religion and the Right to Travel.* – Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

SEC. 31. *Separability Clause.* – If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SEC. 32. *Repealing Clause.* – All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly: *Provided*, That this Act shall not in any way amend or repeal the provisions of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.”

SEC. 33. *Effectivity.* – This Act shall take effect 15 days from the date of its complete publication in at least two newspapers of general circulation.

**RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT No. 9208
OTHERWISE KNOWN AS THE “ANTI-TRAFFICKING IN PERSONS ACT OF 2003”**

Pursuant to the authority of the Inter-Agency Council Against Trafficking (IACAT) under Section 29 of Republic Act No. 9208, otherwise known as the “Anti-Trafficking in Persons Act of 2003,” the following rules and regulations are hereby promulgated to implement the provisions of said Act:

ARTICLE I

GENERAL PROVISIONS

SECTION 1. Title. – These rules and regulations shall be known and cited as “The Rules and Regulations Implementing the Anti-Trafficking in Persons Act of 2003.”

SEC. 2. Purpose. – These rules and regulations are hereby promulgated to institute policies, establish the institutional mechanism for the support and protection of trafficked persons and prescribe the procedures and guidelines for the implementation of Republic Act No. 9208 in order to facilitate compliance therewith and achieve the objectives thereof.

SEC. 3. Declaration of State Policy. – The State values the dignity of every human person and guarantees the respect for individual rights. Towards this end, the State shall give the highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

The State also recognizes the equal rights and inherent human dignity of women and men, as well as the rights of children, as enshrined and guaranteed in the following international instruments:

- (i) Universal Declaration on Human Rights;
- (ii) Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others;
- (iii) Convention on the Elimination of All Forms of Discrimination Against Women;
- (iv) Convention on the Rights of the Child and its Optional Protocols;
- (v) Convention on the Protection of Migrant Workers and Members of their Families;
- (vi) United Nations Convention Against Transnational Organized Crimes including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- (vii) ILO Convention No. 182 (Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor); and
- (viii) All other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a State Party.

In all actions concerning children, their best interests shall be the paramount consideration.

SEC. 4. Construction. – These rules and regulations shall be liberally construed in favor of the trafficked persons to promote human dignity; ensure their recovery, rehabilitation and reintegration into the mainstream of society; eliminate trafficking in persons; and achieve the objectives of the Act.

ARTICLE II

DEFINITION OF TERMS

SECTION 5. Definition of Terms. – As used in these rules and regulations, unless the context otherwise requires, the following terms shall be understood to mean:

- (a) *Act* – refers to Republic Act No. 9208, otherwise known as the “Anti-Trafficking in Persons Act of 2003”;
- (b) *Council* – refers to the Inter-Agency Council Against Trafficking (IACAT) created under Section 20 of the Act;
- (c) *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons, with or without the victim’s consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as “trafficking in persons” even if it does not involve any of the means set forth in the preceding paragraph;

- (d) *Child* – refers to a person below 18 years of age or one who is over 18 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;
- (e) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration;
- (f) *Forced Labor and Slavery* – refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception;
- (g) *Sex Tourism* – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military;
- (h) *Sexual Exploitation* – refers to participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim’s vulnerability;
- (i) *Debt Bondage* – refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt;
- (j) *Pornography* – refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person primarily for sexual purposes; and
- (k) *Involuntary Servitude* – refers to a condition of enforced, compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or other forms of abuse or physical restraint, or the abuse or threatened abuse of the legal process.

ARTICLE III

THE INTER-AGENCY COUNCIL AGAINST TRAFFICKING (IACAT)

SECTION 6. *Creation.* – The Inter-Agency Council Against Trafficking (IACAT) shall be established which shall be primarily tasked to coordinate, monitor and oversee the implementation of the Act.

SEC. 7. *Composition.* – The Council shall be composed of the following:

- (a) Secretary, Department of Justice (DOJ) as Chairperson;
- (b) Secretary, Department of Social Welfare and Development (DSWD) as Co-Chairperson;
- (c) Secretary, Department of Foreign Affairs (DFA) as Member;
- (d) Secretary, Department of Labor and Employment (DOLE) as Member;
- (e) Administrator, Philippine Overseas Employment Administration (POEA) as Member;
- (f) Commissioner, Bureau of Immigration (BI) as Member;
- (g) Director-General, Philippine National Police (PNP) as Member;
- (h) Chairperson, National Commission on the Role of Filipino Women (NCRFW) as Member;
- (i) One representative from an NGO representing the women sector as Member;
- (j) One representative from an NGO representing the Overseas Filipino Workers (OFWs) sector as Member;
and
- (k) One representative from an NGO representing the children sector as Member.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an Assistant Secretary or its equivalent to attend the meetings of the Council.

SEC. 8. *Qualifications, Selection and Appointment of NGO and its Representatives.* – The NGOs, with national and international networks, and its representatives to the Council must have a proven track record of involvement in the prevention and suppression of trafficking in persons. They shall be nominated by any of the government agency representatives of the Council and shall be selected by majority vote thereof and endorsed to the President. They shall be appointed by the President for a term of three years.

SEC. 9. *Functions of the Council.* – The Council shall have the following powers and functions:

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of the Act;
- (c) Monitor and oversee the strict implementation of the Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the local government units (LGUs), concerned agencies, and NGOs;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of the Act;

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- (h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;
- (i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement the Act;
- (j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;
- (k) Develop the mechanism to ensure the timely coordinated and effective response to cases of trafficking in persons;
- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- (m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the Internet;
- (n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- (p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of the Act.

SEC. 10. Reportorial Function. – Within 60 days after the closing of each calendar year, the Council shall submit to the Office of the President a comprehensive report on the actions and programs taken by the Council relative to and concerning the implementation of the Act.

SEC. 11. Meetings of the Council. – The Council shall meet regularly at least once a month. Special meetings may be called by the Chair as the need arises. Majority of the members of the Council shall constitute a quorum to transact business.

SEC. 12. Honoraria or Emoluments. – The Members of the Council or their designated permanent representatives shall receive honoraria or emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

SEC. 13. Implementation of the Law at Sub-National and Local Levels. – The Council shall, as far as practicable, develop mechanisms to ensure the implementation of the law at the sub-national and local levels.

ARTICLE IV

SECRETARIAT

SECTION 14. Organization. – The Department of Justice shall establish a Secretariat to assist the Council in the performance of its functions. The Secretary of Justice shall determine the organizational structure and staffing pattern of the Secretariat.

SEC. 15. Functions. – The Secretariat shall have the following functions:

- (a) Coordinate and monitor, under the direction of the Council, the implementation of the policies and guidelines promulgated by the Council;
- (b) Establish, maintain and manage a central database on trafficking in persons;
- (c) Provide secretariat, records keeping and other services to the Council; and
- (d) Perform such other functions as may be directed by the Council.

ARTICLE V

ROLES AND RESPONSIBILITIES

SECTION 16. Common Roles and Responsibilities of Council Member Agencies. – All member government agencies of the Council shall have the following common roles and responsibilities:

- (a) Develop policies and programs supportive of and consistent with the objectives of the Act;
- (b) Enhance the capability of its officers and personnel involved in trafficking issues and concerns through appropriate training and staff support programs;
- (c) Undertake information, education and advocacy campaigns against trafficking in persons;
- (d) Maintain a databank on trafficking in persons to be shared among relevant agencies and complement the central databank to be established by the Council; and
- (e) Document good practices as bases for policy formulation and program development.

SEC. 17. Specific Roles and Responsibilities of National Government Agencies which are Members of the Council. – The following national government agencies, which are member agencies of the Council, shall have, but not limited to, the following roles and responsibilities in the prevention and suppression of trafficking in persons:

(a) Department of Justice (DOJ)

- (i) Ensure the prosecution of persons for violations of the Act;
- (ii) Designate and train special prosecutors who shall investigate and prosecute cases of trafficking;
- (iii) Establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Commission on Human Rights (CHR), Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups;
- (iv) Provide witness protection and immunity from prosecution to trafficked victims and their witnesses;
- (v) Conduct training and continuing education program on investigation and prosecution for trafficking in persons and other related offenses for prosecutors and law enforcement officers;
- (vi) Receive, evaluate, process and investigate claims for compensation by trafficked victims, when applicable, pursuant to Republic Act No. 7309 (Victims Compensation Act);
- (vii) Review and recommend policies and measures to enhance protection against trafficking in persons;
- (viii) Recommend the negotiation of mutual legal assistance and extradition treaties with other countries in coordination with the DFA; and
- (ix) Coordinate with and/or provide assistance to the Anti-Money Laundering Council (AMLC) on cases of trafficking in persons with possible money laundering underpinnings.

(b) Department of Social Welfare and Development (DSWD)

- (i) Provide psychosocial counseling, temporary shelter and other support services to victims/survivors of trafficking and their families;

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- (ii) Make available skills training and livelihood services to victims/survivors of trafficking;
- (iii) Develop program and other support interventions to facilitate the recovery and reintegration of trafficked victims into their families and communities;
- (iv) Provide social welfare services to Filipino victims of trafficking in other countries through the DSWD Social Welfare Attaché and social workers posted in foreign countries, which may include but not limited to stress management, repatriation and other appropriate psychosocial interventions for their protection and welfare;
- (v) Conduct technical assistance and capability building activities for social welfare officers/social workers of LGUs and NGOs;
- (vi) Accredite NGOs that provide programs and services to ensure that they meet the standards set by the Department; and
- (vii) Provide temporary shelter and psychosocial services to foreign nationals who are victims of trafficking in persons as confirmed by the Bureau of Immigration.

(c) Department of Foreign Affairs (DFA)

- (i) Make available its resources and facilities overseas and to provide services for trafficked persons regardless of the manner of their entry to the receiving country;
- (ii) Explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs;
- (iii) Actively participate in bilateral, regional and international initiatives and cooperative arrangements aimed at suppressing trafficking in persons and protecting and assisting victims of trafficking to include monitoring of inter-country adoption cases;
- (iv) Take necessary measures for the efficient implementation of the Machine Readable Passports and Visas to protect the integrity of Philippine passports, visas, and other travel documents to reduce the incidence of trafficking in persons through the use of fraudulent identification documents;
- (v) Establish and implement pre-marriage, on-site and pre-departure counseling program on inter-marriages. For this purpose, the DFA shall promulgate the necessary guidelines to implement the said program; and
- (vi) Integrate into the pre-departure orientation-seminars for foreign service personnel a training module on trafficking in persons.

(d) Department of Labor and Employment (DOLE)

- (i) Ensure the strict implementation of and compliance with rules and guidelines relative to the employment of persons locally and overseas;
- (ii) Monitor, document and report cases of trafficking in persons involving employers and labor recruiters;
- (iii) Make available existing resources such as employment and livelihood programs as part of the government's measure to suppress trafficking in persons; and
- (iv) Conduct public awareness programs and activities to prevent victimization.

(e) Philippine Overseas Employment Administration (POEA)

- (i) Implement an effective pre-employment orientation seminar and pre-departure counseling program to applicants for overseas employment;
- (ii) Formulate a system providing free legal assistance to trafficked persons which shall include the following:

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- (a) Provision of legal assistance to victims of trafficking in persons by means of, or in the guise of, recruitment for overseas employment, as defined in Section 6 of RA No. 8042, such as free legal advice, assistance in the preparation and filing of administrative and criminal actions for trafficking as defined in the Act, without prejudice to the filing of administrative and/or criminal actions for illegal recruitment, as defined in RA No. 8042, when proper; and
- (b) Assistance in the prosecution of persons who engage in, promote and facilitate trafficking in persons by means of, or in the guise of, recruitment for overseas employment, as defined in Section 6 of RA No. 8042.

In this connection, the POEA shall likewise adopt a policy of confidentiality in all cases referred to it involving possible violations of the Act.

- (iii) Adopt policies and procedures, and develop and implement programs, geared towards the eradication of trafficking in persons as well as acts that promote trafficking in persons such as, but not limited to, the following:
 - (a) Comprehensive and Integrated Education Program on overseas employment which shall be undertaken in partnership with other relevant organizations and government entities. Such education program shall cover all stages of recruitment and employment and shall provide information useful for overseas workers including a module on anti-trafficking program and measures;
 - (b) Nationwide multi-media and sustainable grassroots information campaign to create public awareness on the realities of overseas employment and dangers of becoming victims of illegal trafficking activities;
 - (c) Special operations, complementary to the power of the PNP, on persons and entities engaged in recruitment for overseas employment reported to be violating the provisions of the Act for the purpose of effecting closure of said establishments pursuant to the provisions of RA No. 8042;
 - (d) Database of cases involving, and personalities involved in, trafficking persons separate and distinct from its illegal recruitment cases for monitoring purposes.
- (iv) In cases of repatriation involving workers recruited and deployed by licensed agencies, the POEA shall notify the agency concerned to provide a plane ticket or Prepaid Travel Advice (PTA) and shall impose sanctions on said agencies for failure to cooperate in providing welfare assistance to OFWs they have deployed; and
- (v) Continue to regulate private sector participation in the recruitment and overseas placement of workers through its licensing and registration system pursuant to its rules and regulation on overseas employment. It shall formulate and implement, in coordination with appropriate entities concerned, when necessary, a system of promoting and monitoring the overseas employment of Filipino workers, taking into consideration their welfare and protection from the dangers and risks inherent in overseas employment, including illegal trafficking.

(f) Bureau of Immigration (BI)

- (i) Strictly administer and enforce immigration and alien registration laws;
- (ii) Adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure;
- (iii) Ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the pre-departure and counseling program requirement of the Act;

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- (iv) Strictly implement the requirement for a parental travel authority duly processed by the DSWD for minors traveling abroad unaccompanied by one parent, and the travel clearance for minors traveling abroad unaccompanied by both parents;
- (v) Ensure compliance by Overseas Filipino Workers of the departure requirements of the POEA;
- (vi) Conduct periodic training and seminar on fraudulent document detection and passenger assessment to enhance the level of skill and competence of all its immigration officers and agents in document fraud detection;
- (vii) Conduct periodic study of the trends, routes and *modus operandi* employed by the traffickers including its recruitment base, transit countries and countries of destination;
- (viii) Establish a network with other law enforcement agencies and immigration counterparts of source, transit and destination countries to facilitate exchange and sharing of information on the activities of trafficking syndicates;
- (ix) Establish network with LGUs for the effective apprehension of suspected traffickers and their cohorts;
- (x) Develop a program for the procurement and installation of International Civil Aviation Organization (ICAO)-compliant machine readers and fraud detection equipment at all international airports and seaports in the country to deter trafficking in persons; and
- (xi) Develop and distribute materials containing advisory and other pertinent information to enhance awareness against trafficking in persons.

(g) Philippine National Police (PNP)

- (i) Undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking;
- (ii) Coordinate closely with various law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. For this purpose, it shall also:
 - (a) Pursue the detection and investigation of suspected or alleged trafficking activities at airports through its Aviation Security Group, at seaports and/or harbors through its Maritime Group, and at land transportation terminals through its police station and when proper, file the appropriate charges against traffickers in the proper court;
 - (b) Coordinate with the Philippine Ports Authority (PPA) which may have initially processed complaints at their “Balay Silungan sa Daungan” and with NGOs working on trafficking in persons in ports; and
 - (c) Coordinate with local and barangay officials with respect to the apprehension and/or arrest of traffickers.
- (iii) Establish a system to receive complaints and calls to assist trafficked persons, and the conduct of rescue operations;
- (iv) Direct and supervise the enforcement of its mandate under the Act and its rules and regulations;
- (v) Supervise the conduct of investigations relating to apprehension occurring at land transportation terminals, domestic seaports and airports and monitor the filing of appropriate cases against traffickers;
- (vi) Formulate plans and programs for the prevention and/or reduction of trafficking in persons;
- (vii) Integrate in the program of instruction comprehensive, gender-sensitive and child-friendly investigation and handling of cases of trafficking in persons in the Philippine National Police Academy (PNPA); Philippine Public Safety College (PPSC) and other training schools operated and managed by the PNP; and

- (viii) Establish anti-trafficking section under the Women and Children Complaint Desks (WCCD) in all city and municipal police stations.

(h) National Commission on the Role of Filipino Women (NCRFW)

- (i) Actively advocate and participate in international and regional discussions and initiatives in trafficking in women and include the same in all of its international commitments and policy pronouncements. Where possible and appropriate, work with the Department of Foreign Affairs in forging bilateral and multilateral collaborative projects on trafficking;
- (ii) Assist the Council in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies;
- (iii) Assist the Council in the conduct of information dissemination and training to frontline government agencies, NGOs and the general public;
- (iv) Assist in the development of gender-responsive documentation system in coordination with other agencies and the National Statistical Coordination Board (NSCB) through its monitoring of the situation of women particularly on violence against women;
- (v) Assist the Council in the formulation of prevention and reintegration programs for victims of trafficking including the demand side; and
- (vi) Conduct studies on the root causes, magnitude and forms of trafficking in women and document best practices in prevention programs.

SEC. 18. Roles and Responsibilities of Other Relevant National Government Agencies. – Consistent with their mandates under existing laws, the following agencies shall integrate human trafficking issues in their strategy and program formulation and implement programs and services for the prevention and suppression of trafficking and for the protection of trafficked victims. They shall likewise have the following roles and responsibilities:

(a) Department of the Interior and Local Government (DILG)

- (i) Conduct a systematic information dissemination/advocacy and prevention campaign against trafficking in persons;
- (ii) Maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons;
- (iii) Issue directives to the LGUs and *barangays* to institutionalize recruiter-monitoring mechanisms and increase public awareness regarding trafficking in persons;
- (iv) Promote family and community empowerment to prevent trafficking in persons; and
- (v) Strengthen, activate and mobilize existing committees, councils, similar organizations and special bodies at the local level to prevent and suppress trafficking in persons.

(b) Department of Tourism (DOT)

- (i) Formulate and implement preventive measures to stop sex tourism packages and other activities of tourism establishments which might contribute to the trafficking in persons in coordination with local government units; and
- (ii) Provide training to tourist security officers on surveillance, investigation and rescue operation strategies.

(c) Department of Education (DepEd)

- (i) Integrate in the appropriate subject areas core messages on migration and trafficking in the elementary and secondary levels by providing lessons with emphasis on their implications and social costs to persons and country;

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- (ii) Provide opportunities for trafficked persons in the educational mainstream through the basic education and non-formal education curricula; and
- (iii) Provide education and raise consciousness of boys/men in schools and communities in order to discourage the “demand side” or the use/buying of trafficked women and children.

(d) Department of Health (DOH)

- (i) Make available its resources and facilities in providing health care to victims of trafficking which shall, at all times, be held confidential.

(e) Department of Transportation and Communication (DOTC)

- (i) Provide guidelines for the land, sea and air transport providers to train their personnel in trafficking in persons;
- (ii) Standardize guidelines for monitoring trafficking in persons in every port; and
- (iii) Monitor the promotion of advertisement of trafficking in the Internet.

(f) Commission on Human Rights (CHR)

- (i) Conduct advocacy and training programs relating to anti-trafficking;
- (ii) Investigate and recommend for prosecution violations of the Act;
- (iii) Provide free legal aid to victims of trafficking and other assistance under the human rights protection services;
- (iv) Integrate anti-trafficking efforts in the Barangay Human Rights Action Center (BHRAC); and
- (v) Monitor government compliance to international human rights treaty obligations related to the suppression/elimination of trafficking, particularly the Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Protection of Migrant Workers and Members of Their Families, and the UN Convention Against Transnational Organized Crimes including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

(g) National Bureau of Investigation (NBI)

- (i) Conduct surveillance, monitor and investigate recruiters, travel agencies, hotels and other establishments suspected to be engaged in trafficking in persons;
- (ii) Coordinate closely with all the Council member agencies for effective detection and investigation of suspected traffickers;
- (iii) Formulate plans and programs for the detection and prevention of trafficking, and the arrest and prosecution of suspected traffickers;
- (iv) Share intelligence information on suspected traffickers to all Council member agencies, when necessary; and
- (v) Foster cooperation and coordination with the law enforcement agencies of other countries and the INTERPOL in the investigation and apprehension of suspected traffickers.

(h) Philippine Center on Transnational Crime (PCTC)

- (i) Undertake strategic researches on the structure and dynamics of trafficking in persons with transnational crime dimension, predict trends and analyze given factors for the formulation of individual and collective strategies for the prevention and detection of trafficking in persons and the apprehension of criminal elements involved; and

- (ii) Serve as the focal point in international law enforcement coordination on trafficking in persons particularly with the INTERPOL.
- (i) **Overseas Workers Welfare Administration (OWWA)**
 - (i) Assist in the information and advocacy campaign among OFWs to prevent trafficking in persons;
 - (ii) Assist in the documentation of cases of trafficking and ensure the provision of its programs and services to OFWs and their families; and
 - (iii) Include a module on anti-trafficking in its pre-departure seminar.
- (j) **Council for the Welfare of Children (CWC)**
 - (i) Integrate in its development and strategic frameworks issues and concerns affecting trafficking in children and ensure the adoption of such frameworks by the LGUs and other stakeholders;
 - (ii) Vigorously advocate against trafficking of children;
 - (iii) Improve data on trafficking in children through integration of critical and relevant indicators into the monitoring system for children;
 - (iv) Adopt policies and measures that will protect and promote the rights and welfare of children victims of trafficking and coordinate and monitor their implementation; and
 - (v) Address issues on trafficking of children through policy and program interventions.
- (k) **Philippine Information Agency (PIA)**
 - (i) Enhance public awareness on trafficking in persons, pertinent laws and possible actions to prevent victimization and re-victimization by developing public advocacy program as well as printing and distributing appropriate information materials.
- (l) **Technical Education and Skills Development Authority (TESDA)**
 - (i) Provide skills and entrepreneurial training to trafficked victims; and
 - (ii) Formulate a special program to ensure the provision of appropriate skills training for trafficked victims.

Sec. 19. Roles and Responsibilities of Local Government Units (LGUs). – The LGUs shall have the following roles and responsibilities:

- (a) Monitor and document cases of trafficked persons in their areas of jurisdiction;
- (b) Effect the cancellation of licenses of establishments which violate the provisions of the Act and ensure its effective prosecution;
- (c) Undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities and provinces in coordination with the DILG, PIA, Commission on Filipino Overseas (CFO), NGOs and other concerned agencies;
- (d) Encourage and support community-based initiatives which address trafficking in persons;
- (e) Provide basic social services for the prevention, rescue, recovery, rehabilitation and reintegration/after care support services to victims of trafficking in persons;
- (f) Enact ordinances or issuances aimed at providing protection and support to trafficked persons and adopt measures to prevent and suppress trafficking in persons; and
- (h) Strengthen, activate and mobilize existing committees, councils, similar organizations and special bodies at the provincial, city, municipal and barangay levels to prevent and suppress trafficking in persons.

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SEC. 20. Roles and Responsibilities of Non-Government Organizations which are Members of the Council. – The NGO members of the Council shall have the following roles and responsibilities:

- (a) Assist government agencies in formulating and implementing policies, programs and IEC campaign against trafficking;
- (b) Assist in capacity building activities of government personnel and share their experiences and expertise in handling trafficking cases;
- (c) Coordinate with concerned government agencies, LGUs and other NGOs in reporting alleged perpetrators, rescuing victims of trafficking, and conducting investigation/surveillance, if indicated;
- (d) Undertake programs and activities for the prevention, rescue, recovery and reintegration of the victims of trafficking and other support services for their families;
- (e) Document and/or assist in the documentation of cases of trafficking;
- (f) Disseminate guidelines to all its network members, local and international, on policies and programs addressing issues on trafficking in persons;
- (g) Formulate educational modules to address the demand side of trafficking; and
- (h) Perform such other tasks as may be agreed upon by the Council.

SEC. 21. Assistance of Other Agencies and Institutions. – In implementing the Act and these rules and regulations, the agencies concerned may seek and enlist the assistance of NGOs, people’s organizations (POs), civic organizations and other volunteer groups, which will all likewise be encouraged to assume the same roles and responsibilities enumerated in the preceding Section.

ARTICLE VI

REPORTING OF SUSPECTED/ALLEGED TRAFFICKING INCIDENT

SECTION 22. Who May and To Whom to Report. – Any person who has any knowledge or learns of facts or circumstances that give rise to a reasonable belief that a person will be, or may be, or has been trafficked shall immediately report the same, either orally, in writing or through other means, to any member of the Council, the *barangay* authorities, the nearest police or other law enforcement agency, the local social welfare and development office or the local Council for the Protection of Children.

In the case of trafficking cases abroad, the report shall be made to the nearest Philippine Embassy/Consulate.

SEC. 23. Action on the Report. – The agency, entity or person to whom the report is made shall immediately act as soon as the report is received in coordination with other relevant government agency for appropriate intervention.

For this purpose, the Council shall develop a mechanism to ensure the timely, coordinated and effective response to cases of trafficking in persons.

ARTICLE VII

INTERCEPTION, ARREST AND INVESTIGATION OF TRAFFICKERS

SECTION 24. Procedure in the Interception, Arrest and Investigation of Traffickers in Persons at International Airport or Seaport. – When an offense punishable under the Act or any other offense in relation thereto or in furtherance thereof has been committed, or is actually being committed in the presence of an immigration officer assigned at the international airport or seaport, he shall immediately cause the interception and/or arrest of the persons involved for investigation. The DOJ Task Force Against Trafficking shall cause the filing of appropriate case in court when evidence warrants.

If the person arrested is a foreigner, the concerned BI investigating unit shall take full custody over the arrested person, conduct the investigation proper *motu proprio* and endorse the complaint and supporting documents to the prosecutor for inquest or Municipal Trial Court Judge for appropriate proceedings.

SEC. 25. Procedure in the Interception, Arrest and Investigation of Traffickers in Persons at Local Airport, Seaport and Land Transportation Terminals. – In cases where the violation is committed at local seaport, airport or in land transportation terminals, the members of the law enforcement agency shall immediately cause the interception and/or arrest of the suspected traffickers. Thereafter, the investigation shall be conducted by the law enforcement agency on the person/s intercepted/arrested, and refer the case to the Prosecutor’s Office of the place where the offense was committed or to the DOJ Task Force Against Trafficking in Persons or Task Force on Passport Irregularities or Municipal Trial Court of the place where the crime was committed in case of municipalities and non-chartered cities for purposes of inquest or preliminary investigation as the case may be.

SEC. 26. Creation of a Joint Task Force Against Trafficking in Persons. – For the purpose of the above provisions, there shall be created a Joint Task Force Against Trafficking in Persons assigned at airports to be composed of Prosecution, BI, PNP, and NBI personnel and another Task Force assigned at land transportation terminals and local seaports and airports to be composed of Prosecution, PNP, BI, PPA, and PCG personnel. The DOJ National Task Force Against Trafficking in Persons shall issue the necessary operational guidelines for the effective coordination, apprehension, investigation and prosecution of violations of the Act. The DOJ Task Force assigned at local seaports, airports and land transportation terminals shall cooperate or coordinate with the active NGOs concerned with trafficking in persons.

SEC. 27. Rights of the Person Arrested, Investigated or Detained. – In all cases, the rights of the person arrested, investigated or detained as provided by the Philippine Constitution and under Republic Act No. 7438 (*An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof*) shall, at all times, be respected.

ARTICLE VIII

RESCUE/RECOVERY AND REPATRIATION OF VICTIMS

SECTION 28. The Country Team Approach. – The country team approach under Executive Order No. 74, series of 1993 and further enunciated in Republic Act No. 8042 shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons regardless of their immigration status. Under the Country Team Approach, all officers, representatives and personnel of the Philippine government posted abroad regardless of their mother agencies shall, on a per country basis, act as one-country team with mission under the leadership of the Ambassador or the head of mission.

SEC. 29. Rescue at the Country of Destination.

(a) *Procedure.* – When the victim is a Filipino national and at the time of rescue is residing abroad, the embassy or consulate which has jurisdiction over the place where the victim is residing shall verify the veracity of the report of incidence of trafficking and inquire about the condition of the victim.

Consistent with the country team approach, the Post concerned shall send a team composed of a consular officer and personnel from the Philippine Overseas Labor Office (POLO) or the Filipino Workers Resource Center (FWRC); the Office of the Social Welfare Attaché as the case may be, to conduct a visit to the jail, establishment, work site or residence of the victim. In the case of Posts without attached services, the team will be composed of a consular officer and personnel from the Assistance-to-Nationals section.

The Post shall make representations with the police authorities or other relevant law enforcement agencies with respect to the conduct of rescue operations.

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Rescue operations shall also be made in cooperation and close coordination with some NGOs, local contacts or private individuals when necessary.

In countries and areas where the services of the FWRC is not accessible, a mobile type of services shall be extended by the country team members to trafficked persons regardless of their status in the host country.

Thereafter, the victim will be encouraged to execute a sworn statement, recounting among others, the people/establishment involved in the recruitment/transfer and deployment, the *modus operandi* employed to recruit, transport and deploy the victim, and other pertinent information which could provide a lead in the investigation and eventual prosecution of the perpetrators.

(b) *Assistance to Trafficked Persons.* – The trafficked person shall be provided with temporary shelter and other forms of assistance.

In countries where there is a Filipino Workers Resource Center, the services available to overseas Filipinos as provided for in Republic Act No. 8042 shall also be extended to trafficked persons regardless of their status in the host country.

(c) *Legal Assistance Fund.* – Trafficked persons shall be considered under the category “Overseas Filipinos in Distress” and may avail of the Legal Assistance Fund created by Republic Act No. 8042, subject to the guidelines as provided by law, including rules and regulations issued by the DFA as to its utilization and disbursement.

SEC. 30. Repatriation of Trafficked Persons. – The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of trafficked persons shall expose the victims to greater risks, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

SEC. 31. Procedure for Repatriation. – In accordance with existing rules and regulations on the use and disbursement of Assistance-to-Nationals Fund of the DFA for the repatriation of distressed OFWs, the Post shall immediately request the DFA, through the Office of the Undersecretary for Migrant Workers’ Affairs (OUMWA), allocation of funds for the repatriation of the victim.

In appropriate cases and to avoid re-victimization, the Post may withdraw the passport of the victim and forward it to the DFA and in its place issue a Travel Document (FA Form 79[B]) valid for direct travel to the Philippines.

The Post concerned shall report to the DFA, through the OUMWA, copy furnished the Office of Consular Affairs, the actual date of repatriation and other pertinent information and submit a copy of the sworn statement and other relevant documents.

In appropriate cases, especially when the victim is suffering from mental illness, has suffered physical or sexual abuse or has received serious threats to his or her life and safety, the victim will be met upon arrival in the Philippines by DSWD personnel, in coordination with the Joint Task Force Against Trafficking in Persons and other government agencies such as OWWA, BI and DOH. In the case of mentally ill patients, minors, and other persons requiring special care, the Post shall designate a duly authorized individual to escort said victims to the Philippines.

The victim will be encouraged, if he or she has not done so before, to execute a sworn statement with the view of filing the appropriate charges against the suspected trafficker in the Philippines.

Should the victim request the assistance of DFA, OUMWA shall interview the victim and make recommendations for investigation with law enforcement agencies such as the PNP and the NBI. In cases where recruitment agencies are involved, the case shall also be referred to the POEA for appropriate action. The report shall also be forwarded to the BI for case buildup.

The victim may be referred to the DSWD/Local Social Welfare and Development Office or to the NBI One-Stop Shop for psychosocial interventions, psychological and medical examination and follow-through therapy sessions. Protective custody and emergency shelter shall also be provided to the victim, in appropriate cases.

SEC. 32. *Rescue within the Country.* – Rescue operations within the country shall be primarily undertaken by the law enforcement agencies in coordination with LGUs, DOLE, DSWD and DOH. Upon receipt of a report of a suspected or alleged trafficking incident or activity, the law enforcement agency to which the report is made shall conduct rescue operations of trafficked persons. At the minimum, rescue operations shall be guided by the following:

- (a) Conduct of rescue operation of trafficked persons shall be properly coordinated with the concerned agencies particularly DSWD/local social welfare and development officer;
- (b) The rescue team shall ensure full protection of the rights of the trafficked person as well as the traffickers while under its custody and control;
- (c) After the rescue operation, the investigation of the case shall be referred to the Women and Children Complaint Desk (WCCD) desk of the PNP, the Violence Against Women and Children Division (VAWCD) of the NBI or other similar units or desks;
- (d) After the completion of the necessary documents for the filing of cases, the rescue team shall effect the appropriate and immediate turnover of the trafficked person to DSWD/local social welfare and development officer; and
- (e) In the course of investigation of the trafficked person, the investigator handling the case shall ensure that the victim shall be accorded with proper treatment and investigated in a child-friendly and gender-sensitive environment. In the conduct of investigative interviews on children, the law enforcers shall likewise be guided by the Rule on the Examination of a Child Witness promulgated by Supreme Court, as may be applicable. For this purpose, the investigators shall be properly trained in the handling of cases of trafficked persons.

ARTICLE IX

REHABILITATION AND REINTEGRATION OF VICTIMS

SECTION 33. *Comprehensive Program.* – The DSWD, LGUs and other concerned agencies shall provide a comprehensive, gender-sensitive and child-friendly program for the recovery, rehabilitation and reintegration of victims/survivors of trafficking, such as but not limited to the following:

- (a) Implementation of residential care, child placement, educational assistance, livelihood and skills training and other community-based services must be responsive to the specific needs and problems of the victims/survivors and their families;
- (b) Active involvement and participation of the victims/survivors in the rehabilitation and reintegration process shall be encouraged. In order to empower them and to prevent their re-victimization, capability building programs must be provided; and
- (c) Active cooperation and coordination with NGOs and other members of the civil society including the business community, tourism-related industries as well as the media in the rehabilitation and reintegration of victims/survivors shall be undertaken.

SEC. 34. *Procedure.* – The following procedure shall be undertaken in implementing a comprehensive program for the recovery, rehabilitation and reintegration of victims/survivors of trafficking:

- (a) The victim/survivor of trafficking may go to the nearest DSWD/LGU Social Welfare and Development Office for assistance;
- (b) Upon referral/interview the DSWD/Local Government Social Worker shall conduct an intake assessment to determine appropriate intervention with the victim/survivor;

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- (c) The social worker shall prepare a social case study report/case summary for the victim/survivor's admission to a residential facility for temporary shelter or community-based services;
- (d) Provide services/interventions based on the rehabilitation plan in coordination with appropriate agencies, e.g., counseling, legal, medical and educational assistance; livelihood and/or skills training; as well as appropriate services to the family of the trafficked victim/survivor; and
- (e) Monitor implementation and periodically evaluate/update the rehabilitation plan until the victim/survivor has been reintegrated with his/her family and community.

SEC. 35. *Capability Building of Service Providers.* – The frontline agencies and the service providers must undergo training and other capability building activities to enhance their knowledge and skills in handling cases of trafficking to prevent exacerbation of traumatic stress and facilitate more effective crisis interventions, healing and reintegration services.

SEC. 36. *Documentation.* – Data banking, research and documentation of best practices in rehabilitation and reintegration programs shall be conducted to identify efficient and effective measures and services for the victims of trafficking and their families.

ARTICLE X

PROSECUTION, CIVIL FORFEITURE AND RECOVERY OF CIVIL DAMAGES

SECTION 37. *Who May File a Complaint.* – Complaints for violations of the Act may be filed by the following:

- (a) Any person who has personal knowledge of the commission of the offense;
- (b) The trafficked person or the offended party;
- (c) Parents or legal guardians;
- (d) Spouse;
- (e) Siblings; or
- (f) Children.

The foregoing persons may also seek the assistance of the Council in the filing of complaint.

SEC. 38. *Institution of Criminal Action; Effect.* – The institution of the criminal action before the Office of the Prosecutor or the court, as the case may be, for purposes of preliminary investigation shall interrupt the running of the period for prescription of the offense charged. The prescriptive period shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

SEC. 39. *Institution of Criminal and Civil Actions.* – Pursuant to the Revised Rules on Criminal Procedure, when a criminal action is instituted, the civil action arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

SEC. 40. *Exemption from Filing Fees.* – When the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from the payment of filing fees.

SEC. 41. *Venue.* – The offenses punishable under the Act shall be considered as a continuing offense and may be filed in the place where the offense was committed or where any of its elements occurred or where the trafficked person actually resides at the time of the commission of the offense. *Provided*, that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

SEC. 42. Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons.

- (a) After conviction, all proceeds and instruments, including any real or personal property used in the commission of the offense, shall be ordered confiscated and forfeited in favor of the State unless the owner thereof can prove the lack of knowledge of the use of such property in the said illegal activity. Any award for damages arising from the commission of the offense may be satisfied and charged against the personal and separate properties of the offender and if the same is insufficient to satisfy the claim, the balance shall be taken from the forfeited properties as may be ordered by the court.
- (b) During the pendency of the criminal action, no property or income used or derived therefrom which are subject to confiscation and forfeiture, shall be disposed, alienated or transferred and the same shall be *in custodia legis* and no bond shall be admitted for the release of the same.
- (c) The trial prosecutor shall avail of the provisional remedies in criminal cases to ensure the confiscation, preservation and forfeiture of the said properties.
- (d) If the offender is a public officer or employee, the forfeiture of his/her property found to be unlawfully acquired shall be governed by Republic Act No. 1379, otherwise known as *“An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor.”*

ARTICLE XI

LEGAL PROTECTION AND OTHER SERVICES

SECTION 43. Legal Protection. – Trafficked persons shall be recognized as victims of the act or acts of trafficking. As such, they shall not be penalized for crimes directly related to the acts of trafficking enumerated under the Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of the trafficked person to the intended exploitation set forth in the Act shall be irrelevant.

SEC. 44. Preferential Entitlement under the Witness Protection Program. – Any provision of Republic Act No. 6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein.

SEC. 45. Immunity from Criminal Prosecution. – Any person who has personal knowledge in the commission of any of the offenses penalized under the Act and who voluntarily gives material information relative thereto and willingly testifies against the offender shall be exempt from prosecution for the offense with reference to which his information and testimony were given, subject to the following conditions:

- (a) The information and testimony are necessary for the conviction of the accused; and
- (b) Such information and testimony are not yet in the possession of the state.

SEC. 46. Mandatory Services. – To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies shall make available the following services to trafficked persons:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services which shall include information about the victims’ rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person;
- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance to a trafficked child.

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Sustained supervision and follow-through mechanism that will track the progress of recovery, rehabilitation and reintegration of the trafficked persons shall be adopted and carried out.

SEC. 47. *Legal Protection of Trafficked Persons Who are Foreign Nationals.* – Trafficked persons in the Philippines who are nationals of a foreign country shall be entitled to appropriate protection, assistance and services available to the trafficked persons and shall be allowed to continued presence in the Philippines for a period of 59 days to enable them to effect the prosecution of the offenders. Such period may be renewed upon showing of proof by the trial prosecutor that their further testimony is essential to the prosecution of the case. The trial prosecutor shall course his request for extension to the Council which shall accordingly act upon the same. If such request is granted, the registration and immigration fees of such foreign nationals shall be waived.

For this purpose, the Council shall develop additional guidelines to implement this provision.

ARTICLE XII

TRUST FUND

SECTION 48. *Trust Fund; Sources.* – All fines imposed under the Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 of the Act and Article X, Section 42 of these rules and regulations shall accrue to a Trust Fund to be administered and managed by the Council.

SEC. 49. *Utilization.* – The Trust Fund shall be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the mainstream of society. Such programs shall include, but not limited to the following:

- (a) Provision for mandatory services set forth in Section 23 of the Act, and Section 46 of these rules and regulations;
- (b) Sponsorship of a national research program on trafficking and establishment of a data collection system for monitoring and evaluation purposes;
- (c) Provision of necessary technical and material support services to appropriate government agencies and non-government organizations (NGOs);
- (d) Sponsorship of conferences and seminars to provide venue for consensus building among the public, the academe, government, NGOs and international organizations; and
- (e) Promotion of information and education campaign on trafficking.

The Trust Fund may also be used to support the operations of the Secretariat.

SEC. 50. *Use and Disbursement of Trust Fund.* – The use and disbursement of the trust fund shall be subject to the approval of at least two-thirds of the members of the Council and shall be governed by existing government accounting and auditing rules and regulations.

ARTICLE XIII

INTERNATIONAL COOPERATION

SECTION 51. *International Cooperation.* – The Council, in close coordination with the DFA and other concerned agencies, shall promote cooperation, technical assistance and partnership among governments and regional and international organizations on the following aspects:

- (a) Prevention, protection, prosecution, repatriation and reintegration aspects of trafficking in persons, especially women and children;

- (b) Systematic exchange of information and good practices among law enforcement and immigration authorities;
- (c) Prevention, detection, investigation and prosecution of trafficking in persons, including the protection of victims through exchanges and joint training at the bilateral, regional and international levels, between and among relevant officials including police, judges, prosecutors, immigration officers, other law enforcement agents as well as consular authorities; and
- (d) Repatriation of victims of trafficking with due regard to their safety and in consideration of humanitarian and compassionate factors.

ARTICLE XIV

CONFIDENTIALITY

SECTION 52. Confidentiality. – At any stage of the investigation, prosecution and trial of an offense under the Act, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the trafficked person and the accused. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public.

In cases when the prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, reporter or columnist in case of printed materials; announcer or producer in case of television and radio; producer and director of a film in case of the movie industry; or any person utilizing tri-media or information technology to cause publicity of any case of trafficking in persons.

ARTICLE XV

OFFENSES AND PENALTIES

SECTION 53. Acts of Trafficking in Persons. – Any person, natural or juridical, who commits any of the following acts shall suffer the penalty of imprisonment of 20 years and a fine of not less than One Million Pesos (P1 million) but not more than Two Million Pesos (P2 million):

- (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (b) To introduce or match for money, profit or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman with a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
- (e) To maintain or hire a person to engage in prostitution or pornography;
- (f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

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- (g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and
- (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

SEC. 54. Acts that Promote Trafficking in Persons. – Any person, natural or juridical, who shall commit the following acts which promote or facilitate trafficking in persons, shall be penalized with the penalty of imprisonment of 15 years and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million):

- (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
- (b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
- (c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet of any brochure, flyer, or any propaganda material that promotes trafficking in persons;
- (d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
- (e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent and travel documents for the purpose of promoting trafficking in persons;
- (f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and
- (g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

SEC. 55. Qualified Trafficking in Persons. – The following are considered as qualified trafficking and shall be penalized with the penalty of life imprisonment and a fine of not less than Two Million Pesos (P2 million) but not more than Five Million Pesos (P5 million);

- (a) When the trafficked person is a child;
- (b) When the adoption is effected through Republic Act No. 8043, otherwise known as the “Inter-Country Adoption Act of 1995” and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three or more persons, individually or as a group;
- (d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
- (e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- (f) When the offender is a member of the military or law enforcement agencies; and

- (g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

SEC. 56. *Violation of Confidentiality Provisions.* – Any person who violates Section 7 of the Act and Section 52, Article XIV hereof shall suffer the penalty of imprisonment of six years and a fine not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million).

SEC. 57. *Application of Penalties and Other Sanctions.* – The following shall be applied in the imposition of penalties:

- (a) If the offender is a corporation, partnership, association, club, establishment or any judicial person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;
- (b) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place or entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishment in a different name;
- (c) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;
- (d) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether judicial or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under the Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall likewise be forfeited; and
- (e) Conviction by final judgment of the adopter for any offense under the Act shall result in the immediate rescission of the decree of adoption.

SEC. 58. *Use of Trafficked Persons.* – Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

- (a) *First offense* – six months of community service as may be determined by the court and a fine of Fifty Thousand Pesos (P50,000); and
- (b) *Second and subsequent offenses* – imprisonment of one year and a fine of One Hundred Thousand Pesos (P100,000).

The Council shall coordinate with the Supreme Court through the Office of the Court Administrator for the issuance of appropriate guidelines and measures for the judiciary to implement this provision particularly on the aspect of implementing the penalty of community service.

ARTICLE XVI

FUNDING

SECTION 59. *Inclusion in Agency Appropriations.* – The heads of departments and agencies concerned shall immediately include in their annual appropriations the funding necessary to implement programs and services required by the Act and these regulations.

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In the interim, the funding necessary to carry out their mandate under the law may be charged against their Gender and Development (GAD) budget.

ARTICLE XVII

FINAL PROVISIONS

SECTION 60. *Non-Restriction of Freedom of Speech and of Association, Religion and the Right to Travel.* – Nothing in these rules and regulations shall be interpreted as a restriction of the freedom of speech and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

SEC. 61. *Saving Clause.* – The provisions of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act” shall remain applicable and shall not in any way be amended or repealed by the provisions of the Act and these rules and regulations.

SEC. 62. *Separability Clause.* – The declaration of invalidity of any provision of these rules and regulations or part thereof shall not affect the validity of the remaining provisions.

SEC. 63. *Repealing Clause.* – Pertinent provisions of all laws, presidential decrees, executive orders and rules and regulations, or parts thereof, contrary to or inconsistent with the provisions of the Act and these rules and regulations are hereby repealed or modified accordingly.

SEC. 64. *Effectivity.* – These rules and regulations shall take effect 15 days after its complete publication in at least two newspapers of general circulation.

REPUBLIC ACT No. 9231
AN ACT PROVIDING FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOR
AND AFFORDING STRONGER PROTECTION FOR THE WORKING CHILD,
AMENDING FOR THIS PURPOSE REPUBLIC ACT No. 7610, AS AMENDED,
OTHERWISE KNOWN AS THE
“SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT”
Approved on December 19, 2003

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

SECTION 1. Section 2 of Republic Act No. 7610, as amended, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” is hereby amended to read as follows:

SEC. 2. Declaration of State Policy and Principles. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

SEC. 2. Section 12 of the same Act, as amended, is hereby further amended to read as follows:

SEC. 12. Employment of Children. – Children below 15 years of age shall not be employed except:

- 1) When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed: *Provided*, however, That his/her employment neither endangers his/her life, safety, health, and morals, nor impairs his/her normal development: *Provided, further*, That the parent or legal guardian shall provide the said child with the prescribed primary and/or secondary education; or
- 2) Where a child’s employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential: *Provided*, That the employment contract is concluded by the child’s parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: *Provided, further*, That the following requirements in all instances are strictly complied with:
 - (a) The employer shall ensure the protection, health, safety, morals and normal development of the child;
 - (b) The employer shall institute measures to prevent the child’s exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and
 - (c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

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In the above-exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements.

For purposes of this Article, the term 'child' shall apply to all persons under 18 years of age.

SEC. 3. The same Act, as amended, is hereby further amended by adding new sections to be denominated as Sections 12-A, 12-B, 12-C, and 12-D to read as follows:

SEC. 12-A. Hours of Work of a Working Child. – Under the exceptions provided in Section 12 of this Act, as amended:

- (1) A child below 15 years of age may be allowed to work for not more than 20 hours a week: *Provided*, That the work shall not be more than four hours at any given day;
- (2) A child 15 years of age but below 18 shall not be allowed to work for more than eight hours a day, and in no case beyond 40 hours a week;
- (3) No child below 15 years of age shall be allowed to work between eight o'clock in the evening and six o'clock in the morning of the following day and no child 15 years of age but below 18 shall be allowed to work between ten o'clock in the evening and six o'clock in the morning of the following day.

SEC. 12-B. Ownership, Usage and Administration of the Working Child's Income. – The wages, salaries, earnings and other income of the working child shall belong to him/her in ownership and shall be set aside primarily for his/her support, education or skills acquisition and secondarily to the collective needs of the family: *Provided*, That not more than 20 percent of the child's income may be used for the collective needs of the family.

The income of the working child and/or the property acquired through the work of the child shall be administered by both parents. In the absence or incapacity of either of the parents, the other parent shall administer the same. In case both parents are absent or incapacitated, the order of preference on parental authority as provided for under the Family Code shall apply.

SEC. 12-C. Trust Fund to Preserve Part of the Working Child's Income. – The parent or legal guardian of a working child below 18 years of age shall set up a trust fund for at least 30 percent of the earnings of the child whose wages and salaries from work and other income amount to at least Two Hundred Thousand Pesos (P200,000) annually, for which he/she shall render a semi-annual accounting of the fund to the Department of Labor and Employment, in compliance with the provisions of this Act. The child shall have full control over the trust fund upon reaching the age of majority.

SEC. 12-D. Prohibition Against Worst Forms of Child Labor. – No child shall be engaged in the worst forms of child labor. The phrase 'worst forms of child labor' shall refer to any of the following:

- (1) All forms of slavery, as defined under the 'Anti-trafficking in Persons Act of 2003,' or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or
- (2) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or
- (3) The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or
- (4) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:
 - a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or
 - b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or
 - c) Is performed underground, underwater or at dangerous heights; or
 - d) Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or

- e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or
- f) Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or
- g) Is performed under particularly difficult conditions; or
- h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or
- i) Involves the manufacture or handling of explosives and other pyrotechnic products.

SEC. 4. Section 13 of the same Act is hereby amended to read as follows:

SEC. 13. Access to Education and Training for Working Children.

- a) No child shall be deprived of formal or non-formal education. In all cases of employment allowed in this Act, the employer shall provide a working child with access to at least primary and secondary education.
- b) To ensure and guarantee the access of the working child to education and training, the Department of Education (DepEd) shall: (1) formulate, promulgate, and implement relevant and effective course designs and educational programs; (2) conduct the necessary training for the implementation of the appropriate curriculum for the purpose; (3) ensure the availability of the needed educational facilities and materials; and (4) conduct continuing research and development program for the necessary and relevant alternative education of the working child.
- c) The DepEd shall promulgate a course design under its non-formal education program aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.

SEC. 5. Section 14 of the same Act is hereby amended to read as follows:

SEC. 14. Prohibition on the Employment of Children in Certain Advertisements. – No child shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.

SEC. 6. Section 16 of the same Act, is hereby amended to read as follows:

SEC. 16. Penal Provisions.

- a) Any employer who violates Sections 12, 12-A, and Section 14 of this Act, as amended, shall be penalized by imprisonment of six months and one day to six years or a fine of not less than Fifty Thousand Pesos (P50,000) but not more than Three Hundred Thousand Pesos (P300,000) or both at the discretion of the court.
- b) Any person who violates the provision of Section 12-D of this Act or the employer of the subcontractor who employs, or the one who facilitates the employment of a child in hazardous work, shall suffer the penalty of a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than One Million Pesos (P1 million), or imprisonment of not less than 12 years and one day to 20 years, or both such fine and imprisonment at the discretion of the court.
- c) Any person who violates Sections 12-D(1) and 12-D(2) shall be prosecuted and penalized in accordance with the penalty provided for by RA No. 9208 otherwise known as the 'Anti-trafficking in Persons Act of 2003:' *Provided*, That such penalty shall be imposed in its maximum period.
- d) Any person who violates Section 12-D(3) shall be prosecuted and penalized in accordance with RA No. 9165, otherwise known as the 'Comprehensive Dangerous Drugs Act of 2002;' *Provided*, That such penalty shall be imposed in its maximum period.
- e) If a corporation commits any of the violations aforesaid, the board of directors/trustees and officers, which include the president, treasurer and secretary of the said corporation who participated in or knowingly allowed the violation, shall be penalized accordingly as provided for under this Section.

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- f) Parents, biological or by legal fiction, and legal guardians found to be violating Sections 12, 12-A, 12-B and 12-C of this Act shall pay a fine of not less than Ten Thousand Pesos (P10,000) but not more than One Hundred Thousand Pesos (P100,000), or be required to render community service for not less than 30 days but not more than one year, or both such fine and community service at the discretion of the court: *Provided*, That the maximum length of community service shall be imposed on parents or legal guardians who have violated the provisions of this Act three times; *Provided, further*, That in addition to the community service, the penalty of imprisonment of 30 days but not more than one year or both at the discretion of the court, shall be imposed on the parents or legal guardians who have violated the provisions of this Act more than three times.
- g) The Secretary of Labor and Employment or his/her duly authorized representative may, after due notice and hearing, order the closure of any business firm or establishment found to have violated any of the provisions of this Act more than three times. He/she shall likewise order the immediate closure of such firm or establishment if:
 - (1) The violation of any provision of this Act has resulted in the death, insanity or serious physical injury of a child employed in such establishment; or
 - (2) Such firm or establishment is engaged or employed in prostitution or in obscene or lewd shows.
- h) In case of such closure, the employer shall be required to pay the employee(s) the separation pay and other monetary benefits provided for by law.

SEC. 7. The same Act is hereby further amended by adding a new section to be denominated as Section 16-A, to read as follows:

SEC. 16-A. Trust Fund from Fines and Penalties. – The fine imposed by the court shall be treated as a Trust Fund, administered by the Department of Labor and Employment and disbursed exclusively for the needs, including the costs of rehabilitation and reintegration into the mainstream of society of the working children who are victims of the violations of this Act, and for the programs and projects that will prevent acts of child labor.

SEC. 8. Section 27 of the same Act is hereby amended to read as follows:

SEC. 27. Who May File a Complaint. – Complaints on cases of unlawful acts committed against children as enumerated herein may be filed by the following:

- (a) Offended party;
- (b) Parents or guardians;
- (c) Ascendant or collateral relative within the third degree of consanguinity;
- (d) Officer, social worker or representative of a licensed child-caring institution;
- (e) Officer or social worker of the Department of Social Welfare and Development;
- (f) Barangay chairman of the place where the violation occurred, where the child is residing or employed; or
- (g) At least three concerned, responsible citizens where the violation occurred.

SEC. 9. The same Act is hereby further amended by adding new sections to Section 16 to be denominated as Sections 16-A, 16-B and 16-C to read as follows:

SEC. 16-A. Jurisdiction. – The family courts shall have original jurisdiction over all cases involving offenses punishable under this Act: *Provided*, That in cities or provinces where there are no family courts yet, the regional trial courts and the municipal trial courts shall have concurrent jurisdiction depending on the penalties prescribed for the offense charged.

The preliminary investigation of cases filed under this Act shall be terminated within a period of 30 days from the date of filing.

If the preliminary investigation establishes a *prima facie* case, then the corresponding information shall be filed in court within 48 hours from the termination of the investigation.

Trial of cases under this Act shall be terminated by the court not later than 90 days from the date of filing of information. Decision on said cases shall be rendered within a period of 15 days from the date of submission of the case.

SEC. 15. Exemptions from Filing Fees. – When the victim of child labor institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from payment of filing fees.

SEC. 16-C. Access to Immediate Legal, Medical and Psychosocial Services. – The working child shall have the right to free legal, medical and psychosocial services to be provided by the State.

SEC. 10. Implementing Rules and Regulations. – The Secretary of Labor and Employment, in coordination with the Committees on Labor and Employment of both Houses of Congress, shall issue the necessary Implementing Rules and Regulations (IRR) to effectively implement the provisions of this Act, in consultation with concerned public and private sectors, within 60 days from the effectivity of this Act.

Such rules and regulations shall take effect upon their publication in two national newspapers of general circulation.

SEC. 11. Separability Clause. – If any provision of this Act is declared invalid or unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

SEC. 12. Repealing Clause. – All laws, decrees, or rules inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 13. Effectivity. – This Act shall take effect 15 days from the date of its complete publication in the Official Gazette or in at least two national newspapers of general circulation.

DOLE DEPARTMENT ORDER No. 65-04
RULES AND REGULATIONS IMPLEMENTING
REPUBLIC ACT No. 9231 AMENDING REPUBLIC ACT No. 7610, AS AMENDED

Pursuant to Section 10 of Republic Act No. 9231 (An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as amended, Otherwise Known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), the following Implementing Rules and Regulations are hereby promulgated:

CHAPTER 1

PRELIMINARY PROVISIONS

SECTION 1. Coverage. – These Rules shall cover all persons and entities engaging the services of or employing children.

SEC. 2. Declaration of State Policy and Principles. – The State shall provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of, and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts are committed by the said parent, guardian, teacher or person having care and custody of the child. The State shall also protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principles of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

SEC. 3. Definition of Terms. – As used in these Rules, the term:

- (a) *Child* refers to any person under 18 years of age.
- (b) *Child labor* refers to any work or economic activity performed by a child that subjects him/her to any form of exploitation or is harmful to his/her health and safety or physical, mental or psychosocial development.
- (c) *Working child* refers to any child engaged as follows:
 - i. when the child is below 18 years of age, in work or economic activity that is not child labor as defined in the immediately preceding subparagraph, and
 - ii. when the child is below 15 years of age, (i) in work where he/she is directly under the responsibility of his/her parents or legal guardian and where only members of the child's family are employed; or (ii) in public entertainment or information.
- (d) *Parent* refers to either the biological or adoptive mother or father.
- (e) *Guardian* refers to any person who exercises substitute parental authority regardless of whether or not such parental authority over a child is bestowed by a court.
- (f) *Members of the family* refers to the child's parents, guardian, brothers or sisters whether of full or half blood, and other ascendants and descendants or collateral relatives within the fourth civil degree of consanguinity.

- (g) *Employer* refers to any person, whether natural or juridical who, whether for valuable consideration or not, directly or indirectly procures, uses, avails itself of, contracts out or otherwise derives benefit from the work or services of a child in any occupation, undertaking, project or activity, whether for profit or not. It includes any person acting in the interest of the employer.
- (h) *Department* refers to the Department of Labor and Employment.
- (i) *Collective needs of the family* refer to such basic needs as food, shelter, light and water, clothing, education, medical, transportation and other expenditure items necessary for the survival of the family of the child.
- (j) *Work permit* refers to the permit secured by the employer, parent or guardian from the Department for any child below 15 years of age in any work allowed under Republic Act No. 9231.
- (k) *Hours of work* include:
 - (1) all time during which a child is required to be at a prescribed workplace, and
 - (2) all time during which a child is suffered or permitted to work.Rest periods of short duration during working hours shall be counted as hours worked.
- (l) *Workplace* refers to the office, premises or worksite where a child is temporarily or habitually assigned. Where there is no fixed or definite workplace, the term shall include the place where the child actually performs work to render service or to take an assignment, to include households employing children.
- (m) *Public entertainment or information* refers to artistic, literary, and cultural performances for television show, radio program, cinema or film, theater, commercial advertisement, public relations activities or campaigns, print materials, internet, and other media.
- (n) *Formal education* refers to the institutionalized, hierarchically structured and chronologically-guided educational system running from elementary to tertiary levels.
- (o) *Non-formal education* refers to any organized, systematic educational activity conducted outside of the formal education system to provide selected type of learning.
- (p) *Alternative learning system* refers to a parallel and comparable learning system which provides a viable alternative to the existing formal education system.
- (q) *Forced labor and slavery* refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception.
- (r) *Child pornography* refers to any representation of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.
- (s) *Recovery and reintegration* refers to various interventions and services that facilitate the process of healing and eventual return of the child to the family and community.
- (t) *Normal development of the child* refers to the physical, emotional, mental, and spiritual growth of a child within a safe and nurturing environment where he/she is given adequate nourishment, care and protection and the opportunity to perform tasks appropriate at each stage of development.

CHAPTER 2

PROHIBITION ON THE EMPLOYMENT OF CHILDREN

SECTION 4. General Prohibition. – Except as otherwise provided in these Rules, no child below 15 years of age shall be employed, permitted or suffered to work, in any public or private establishment.

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SEC. 5. *Prohibition on the Employment of Children in Worst Forms of Child Labor.* – No child shall be engaged in the worst forms of child labor. The phrase “worst forms of child labor” shall refer to any of the following:

- (a) All forms of slavery, as defined under the “Anti-trafficking in Persons Act of 2003,” or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict.
- (b) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) The use, procuring or offering of a child for illegal or illicit activities, including the production or trafficking of dangerous drugs or volatile substances prohibited under existing laws; or
- (d) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:
 - i. Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or
 - ii. Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or
 - iii. Is performed underground, underwater or at dangerous heights; or
 - iv. Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or
 - v. Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or
 - vi. Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels or vibrations; or
 - vii. Is performed under particularly difficult conditions; or
 - viii. Exposes the child to biological agents such as bacteria, fungi, viruses, protozoa, nematodes and other parasites; or
 - ix. Involves the manufacture or handling of explosives and other pyrotechnic products.

SEC. 6. *Prohibition on the Employment of Children in Certain Advertisements.* – No child below 18 years of age shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.

CHAPTER 3

EXCEPTIONS TO THE PROHIBITION

SECTION 7. *Exceptions and Conditions.* – The following shall be the only exceptions to the prohibition on the employment of a child below 15 years of age:

- (a) When the child works under the sole responsibility of his/her parents or guardian, provided that only members of the child’s family are employed.
- (b) When the child’s employment or participation in public entertainment or information is essential, regardless of the extent of the child’s role.

Such employment shall be strictly under the following conditions:

- i. The total number of hours worked shall be in accordance with Section 15 of these Rules;

- ii. The employment does not endanger the child's life, safety, health and morals, nor impair the child's normal development;
- iii. The child is provided with at least the mandatory elementary or secondary education; and
- iv. The employer secures a work permit for the child in accordance with Sections 8 to 12 of these Rules.

CHAPTER 4

REQUIREMENTS TO AVAIL OF EXCEPTION TO EMPLOYMENT PROHIBITION

SECTION 8. *Work Permit.* – Except as provided in Section 13, no child below 15 years of age shall be allowed to commence work without a work permit. An employer must first secure a work permit from the Regional Office of the Department having jurisdiction over the workplace of the child. In cases where the work is done in more than one workplace falling under the jurisdiction of more than one Regional Office, the application shall be made with the Regional Office having jurisdiction over the principal office of the employer. However, at least two days prior to the performance of the work, the employer shall inform the Regional Office having jurisdiction over the workplace of the activities to be undertaken involving the child.

SEC. 9. *Requirements for the Issuance of Work Permit.* – The employer shall submit to the appropriate Regional Office the following:

- (a) A duly accomplished and verified application for work permit containing the following information:
 - i. Terms and conditions of employment including hours of work, number of working days, remuneration, and rest period, which shall be in accordance with law;
 - ii. Measures to ensure the protection, health, safety, morals, and normal development of the child, including but not limited to the following:
 - 1. Comfortable workplace and adequate quarters;
 - 2. Break or rest periods in comfortable day beds or couches;
 - 3. Clean and separate dressing rooms and toilet facilities for boys and girls;
 - 4. Provision for adequate meals and snacks and sanitary eating facility;
 - 5. Provision of all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick child in case of emergency.
- (b) Except when the child is below 7 years old,
 - i. Proof that the child is enrolled and regularly attending elementary or secondary school classes, consisting of certificate of enrolment for the current year or current school identification or report card; or
 - ii. If the child is not enrolled, a brief description of the program for education, training and skills acquisition for the child, in accordance with Section 19(b) of these Rules.
- (c) An authenticated copy of the child's Birth Certificate or a Certificate of Late Registration of Birth issued by the NSO or the city/municipal registrar;
- (d) A medical certificate issued by a licensed physician stating that he/she has personally examined the child for whom a work permit is being secured, and that the child is fit to undertake the work in which he/she is to be engaged. Such certificate must bear in print the certifying physician's full name and his/her license number;
- (e) Two passport size photographs of the child;

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- (f) When the employer is the parent, guardian, or a family member other than the parent of the child, he/she shall present any valid document such as latest passport, latest postal/company identification card, and driver's license establishing his/her identity. A legal guardian is likewise required to present a duly authenticated proof of legal guardianship while a family member shall present any proof of relationship to the child;
- (g) When the employer is in public entertainment or information, he/she shall submit a certified true copy of the employer's business permit or certificate of registration and a written employment contract to be approved by the Department. An express agreement of the child to the provisions of the contract is needed when such child is between seven and below 15 years of age.

SEC. 10. *Application Fee.* – The employer shall pay an application fee of One Hundred Philippine Pesos (P100.00) to cover administrative costs. This amount may be reviewed and adjusted by the Secretary of Labor and Employment from time to time subject to applicable regulations.

SEC. 11. *Action on the Application.* – Within three working days from the employer's compliance with Sections 8-10, the Regional Office shall require the appearance of the child's parent, guardian, or employer, or the child himself or herself as may be appropriate, to validate the information indicated in the application and to educate such parent, guardian, or employer, on child labor laws and regulations.

The Regional Office, through the Regional Director, shall issue the work permit within three days from compliance with all the foregoing requirements. Non-compliance with the requirements shall automatically result in the denial of the application. In such instances, the application shall be deemed not filed and the Regional Office shall immediately return it to the applicant, indicating the requirements that were not complied with.

SEC. 12. *Validity of Work Permit.* – The work permit shall state the period of its validity based on the employment contract of the application for work permit, as the case may be. However, the period of validity shall in no case exceed one year.

SEC. 13. *Employment of Spot Extras.* – In public entertainment or information, the requirements for the issuance of work permit stated in Sections 8-12 shall not be applicable to the employment of spot extras or those being cast outright on the day of the filming or taping. Instead, the employer shall file a notice with the Regional Office where the work is to be performed that it will undertake activities involving child work. The notice shall be in the form prescribed by the Department and shall state the approximate number of child workers to be employed, the date, place, and time the work is to be performed, and an undertaking that the employment shall be in conformity with Republic Act No. 9231 and these Rules.

SEC. 14. *Compliance with E-Commerce Law.* – The Department shall develop systems to enable parties to comply, through electronic media, with the documentary requirements set forth in these Rules. It shall also set up a database of all contracts filed and work permits issued which shall be accessible to the public, subject to reasonable rules of access which the Department may adopt.

CHAPTER 5

HOURS OF WORK

SECTION 15. *Hours of Work of a Working Child.* – The following hours of work shall be observed for any child allowed to work under Republic Act No. 9231 and these Rules:

- (a) For a child below 15 years of age, the hours of work shall not be more than 20 hours a week, provided that the work shall not be more than four hours at any given day;

- (b) For a child 15 years of age, but below 18, the hours of work shall not be more than eight hours a day, and in no case beyond 40 hours a week; and
- (c) No child below 15 years of age shall be allowed to work between eight o'clock in the evening and six o'clock in the morning of the following day and no child 15 years of age but below 18 shall be allowed to work between ten o'clock in the evening and six o'clock in the morning of the following day.

Sleeping time as well as travel time of a child engaged in public entertainment or information from his/her residence to his/her workplace shall not be included as hours worked without prejudice to the application of existing rules on employees compensation.

CHAPTER 6

WORKING CHILD'S INCOME

SECTION 16. *Ownership and Use of the Working Child's Income.* – The wages, salaries, earnings and other income of the working child belong to him/her in ownership and shall be set aside primarily for his/her support, education, or skills acquisition and secondarily to the collective needs of the family: *Provided*, That not more than 20 percent of the child's income may be used for the collective needs of the family.

SEC. 17. *Administration of the Working Child's Income.* – The income of the working child and/or the property acquired through his/her work shall be administered by both parents. In the absence of, or incapacity of either of the parents, the other parent shall administer the same. In case both parents are absent or incapacitated, the order of preference on parental authority shall be in accordance with Article 216 of the Family Code, as follows:

- (a) The surviving grandparent; in case several survive, the one designated by the court taking into account all relevant considerations, especially the choice of the child over 7 years of age, unless the grandparent chosen is unfit;
- (b) The oldest brother or sister, over 21 years of age, unless unfit or disqualified; and
- (c) The child's actual custodian over 21 years of age, unless unfit or disqualified.

SEC. 18. *Preservation of the Working Child's Income.* – The income of the working child shall be deposited in a Trust Fund or Savings Account set up or opened under his/her name by the administrator of such income, subject to the conditions set forth in this Section and the Civil Code. The administrator shall make an accounting of all wages, salaries, earnings and other income of the child. When the child's gross earnings in a year amount to at least Two Hundred Thousand Pesos (P200,000), the administrator shall set up a Trust Fund for the child where at least 30 percent of such amount shall be deposited. For a child earning less than Two Hundred Thousand Pesos (P200,000) a year, at least 30 percent of his/her income may be deposited in a Savings Account each time the child receives an income. The accumulated savings shall be immediately transferred to the Trust Fund for the child should his/her total gross income for a given year is at least Two Hundred Thousand Pesos (P200,000). The child shall have full control over the Trust Fund upon reaching the age of majority. The administrator shall render a semi-annual accounting of the Trust Fund to the concerned Regional Office of the Department. He or she shall be required to submit, whether actual or online, a verified financial statement in an appropriate form prescribed by the Department.

CHAPTER 7

EDUCATION, TRAINING AND OTHER SERVICES

SECTION 19. *Access to Education and Training for the Working Child.* – Every child shall have access to formal or non-formal education.

- (a) No child shall be deprived of formal, non-formal or alternative learning systems of education. In all cases where the child is allowed to work, the employer shall provide the child with access to at least elementary

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and/or secondary education. No employer shall make a child work during his/her school hours, and hinder his/her access to education during school days.

- (b) The continuing program for education and training for the working child shall be that developed by the Department of Education for formal, non-formal and alternative learning systems of education, or by the Technical Education and Skills Development Authority, whichever is applicable to the circumstances of the child.

SEC. 20. Access to Immediate Legal, Medical and Psychosocial Services. – Working children, including victims of child labor shall have the right to free legal, medical and psychosocial services to be provided by the State through agencies mandated to provide such services, as well as through networks like the National Program Against Child Labor, other existing interagency mechanisms, or those that may be established.

The Department, on its own or in collaboration with concerned institutions, shall set up a mechanism to provide free legal services for working children and their parents or guardians. Such services shall include the provision of information on the child's rights or procedures for filing complaints and claiming compensation, and on such other legal remedies available to them.

The Department shall facilitate the provision of health services to working children and victims of child labor in partnership with concerned sectors. Health services include primary or preventive, secondary or curative, and tertiary or rehabilitative services, or such services as may be necessary to address physical, psychological and social problems arising from child labor.

The Department shall refer working children and victims of child labor to appropriate agencies and organizations for psychosocial services.

The delivery of the above services shall be without prejudice to similar services provided by other agencies, conformably with their own mandates. The Department may also enlist the assistance of non-governmental organizations and other groups in the delivery of these services. In every case, the special needs and peculiar situations of working children, including victims of child labor, shall be taken into account.

CHAPTER 8

ENFORCEMENT AND ADMINISTRATION

SECTION 21. Actions of the Secretary of Labor and Employment or Regional Director. – In case of violation, the Secretary of Labor and Employment or the Regional Director as his or her authorized representative, shall undertake the following actions:

- (a) Order the immediate and permanent closure of the establishment if:
- i. The violation of any provision of Republic Act No. 9231 has resulted in the death, insanity or serious physical injury of a child employed in such establishment; or
 - ii. Such firm or establishment is employing a child for prostitution or obscene or lewd shows.

The employer shall pay all employees affected by the closure their separation pay and other monetary benefits provided for by law.

- (b) Order the immediate and temporary closure of the establishment if there is imminent danger to the life and limb of the child in accordance with the occupational safety and health standards. An imminent danger is a condition or practice that could reasonably be expected to cause death or serious physical harm.

In no case shall the closure be lifted unless the imminent danger has been abated. For the duration of the closure, the employer shall pay the wages of all employees affected. If, after due hearing, the closure is made permanent, the employer shall pay all employees affected their separation benefits, as provided in the immediately preceding subsection.

- (c) In both cases, require the employer to:
- i. Shoulder the transportation cost of the child from the place of work to the DSWD-accredited halfway house and to the child's residence; and
 - ii. Shoulder the total actual cost of medical management, recovery and reintegration of the child, or in case of death, the child's funeral expenses.

SEC. 22. Grounds for Suspension and Cancellation of Work Permit. – The Regional Director shall suspend or cancel the work permit issued to a working child under the following instances:

- (a) If there is fraud or misrepresentation in the application for work permit or any of its supporting documents;
- (b) If the terms and conditions set forth in the child's employment contract and/or employer's undertaking have been violated;
- (c) If the employer fails to institute measures to ensure the protection, health, safety, morals, and normal development of the child as required in Section 7(b)ii;
- (d) If the employer fails to formulate and implement a program for the education, training and skills acquisition of the child; or
- (e) If a child has been deprived access to formal, non-formal or alternative learning systems of education.

SEC. 23. Violations Not Resulting in Death, Insanity or Injury of the Child. – The Regional Director, after due notice and hearing, and without prejudice to the filing of the appropriate criminal and civil actions, shall:

- (a) In case of a first violation, issue a compliance order for immediate restitution and correction of the violation. Failure to comply with said order constitutes a second violation;
- (b) In case of a second violation, issue a compliance order for immediate restitution and correction of the violation and prohibit the employer from hiring a child for six months commencing from date of last offense. Failure to comply with said order constitutes a third violation; and
- (c) In case of a third violation, issue a compliance order for immediate restitution and correction of the violation. Failure to comply with said order constitutes a fourth violation justifying closure of the establishment.

In appropriate cases, the Regional Director may file against the employer a case for indirect contempt as provided for under Rule 71 of the Revised Rules of Court.

SEC. 24. Enforcement Procedure. – The proceedings arising from Sections 21, 22 and 23 shall be summary in nature. It may be initiated *motu proprio* by the Department or upon complaint by any interested party.

Permanent or temporary closure shall be effected upon service by the Regional Director of a notice of closure on the employer. Within 24 hours from notice, the Regional Director shall call a hearing to confirm the closure, in which the employer shall be given the opportunity to present evidence why closure is not an appropriate remedy. Within 72 hours from the last hearing, the Regional Director shall issue an order confirming or lifting the closure, as the case may be.

In the case of suspension or cancellation of work permit, the Regional Director shall serve a notice on the employer and the parent or guardian of the working child, who shall have three days from receipt of the notice to show cause why the work permit should not be cancelled or suspended. The Regional Director shall have 10 days from service of notice within which to issue a revocation, suspension or dismissal order.

Any motion for reconsideration of the Regional Director's action shall be resolved by the Secretary of Labor and Employment. Upon issuance of the notice and during the pendency of the proceedings, the child concerned shall not be allowed to work.

In the event that a violation constituting a ground for cancellation or suspension of work permit is committed in a workplace outside the jurisdiction of the Regional Office which issued the work permit, the Regional Office

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having jurisdiction over the workplace shall immediately stop the employer from requiring the child to work. Within 24 hours thereafter, the Regional Office having jurisdiction of the workplace shall prepare a report to the Regional Office which issued the work permit, for the latter to commence appropriate cancellation or suspension proceedings.

SEC. 25. *Industry Guidelines and Self-Policing Mechanisms.* – The Department may issue appropriate industry-specific guidelines, taking into account the peculiar circumstances of each industry, upon consultation with concerned sectors.

Establishments with at least 200 workers or those with certified collective bargaining agreements (CBAs) shall be encouraged to adopt a self-assessment mode pursuant to Section 1(a) of Department Order No. 57-04, series of 2004 (Labor Standards Enforcement Framework).

Employers, workers and their organizations, professional organizations or business federations are encouraged to establish or adopt mechanisms to monitor their ranks and take corrective action against erring members. The Department shall provide technical assistance in setting up such mechanisms.

SEC. 26. *Administration of Trust Fund from Fines and Penalties.* – The fines imposed by the court upon any violator of Republic Act No. 9231 shall, subject to existing government accounting and auditing rules and regulations, including the provision on trust funds under the General Appropriations Act, accrue to the DOLE-Office of the Secretary Trust Fund for Working Children. This trust fund shall be administered by the Department and disbursed exclusively for programs and projects preventing child labor and mitigating its effects.

Within two months after the date of effectivity of these Rules, the Department shall set up the Trust Fund for Working Children in accordance with existing government accounting, auditing, and Department of Budget and Management requirements. The Department shall:

- (a) Draw up the procedures for the use and disbursement of the Trust Fund;
- (b) Formulate and supervise the implementation of programs for qualified beneficiaries of the Trust Fund; and
- (c) Monitor, through the Regional Offices of the Department, the status of child labor cases that may involve the award of fines under Republic Act No. 9231.

CHAPTER 9

MISCELLANEOUS PROVISIONS

SECTION 27. *Filing of Complaints.* – Complaints on violations specified under Republic Act No. 9231 and these Rules which fall under the jurisdiction of the regular courts shall be filed by persons identified in said law, and in accordance with the Rules of Court.

SEC. 28. *Disposition of Investigation Report.* – The investigation report of the Department on violations that may constitute a criminal offense under Republic Act No. 9231, together with other relevant documents and evidence, shall be immediately forwarded to the provincial or city prosecutor concerned who shall determine the filing of the appropriate criminal charge.

SEC. 29. *Effects on Other Issuances.* – These Rules supersede Department Order No. 18, series of 1994 or the Rules and Regulations Implementing Republic Act No. 7658. All other issuances of the Department inconsistent with the provisions of these Rules are deemed modified accordingly.

SEC. 30. *Effects on Existing Contracts.* – These Rules shall not be interpreted to impair contracts executed prior to its effectivity. All other general rules on non-impairment of contracts shall apply.

SEC. 31. *Separability Clause.* – If any of the provisions of these Rules is declared invalid or unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

SEC. 32. *Effectivity.* – These Rules shall take effect 15 days from the date of its complete publication in two national newspapers of general circulation.

REPUBLIC ACT No. 9255
AN ACT ALLOWING ILLEGITIMATE CHILDREN TO USE THE SURNAME OF THEIR FATHER,
AMENDING FOR THE PURPOSE ARTICLE 176 OF EXECUTIVE ORDER No. 209,
OTHERWISE KNOWN AS THE “FAMILY CODE OF THE PHILIPPINES”
Approved on February 24, 2004

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

SECTION I. Article 176 of Executive Order No. 209, otherwise known as the Family Code of the Philippines, is hereby amended to read as follows:

ART. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. *Provided*, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.

SEC. 2. Repealing Clause. – All laws, presidential decrees, executive orders, proclamations, rules and regulations, which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 3. Effectivity Clause. – This Act shall take effect 15 days from its publication in the Official Gazette or in two newspapers of general circulation.

NSO ADMINISTRATIVE ORDER No. 1
SERIES OF 2004
RULES AND REGULATIONS GOVERNING THE IMPLEMENTATION OF REPUBLIC ACT No. 9255
(AN ACT ALLOWING ILLEGITIMATE CHILDREN TO USE THE SURNAME OF THEIR FATHER,
AMENDING FOR THE PURPOSE, ARTICLE 176 OF EXECUTIVE ORDER No. 209,
OTHERWISE KNOWN AS THE “FAMILY CODE OF THE PHILIPPINES”)

As mandated by Commonwealth Act No. 591, the Office of the Civil Registrar General hereby promulgates the following Implementing Rules and Regulations of Republic Act No. 9255 signed by President Arroyo on February 24, 2004, and took effect on March 19, 2004, 15 days after publication in a newspaper of general circulation.

RULE 1
COVERAGE

- 1.1. These Rules shall apply to all illegitimate children born before or after the effectivity of RA No. 9255. This includes:
- 1.1.1. Unregistered births;
 - 1.1.2. Registered births where the illegitimate children use the surname of the mother.

RULE 2
DEFINITION OF TERMS

As used in these Rules, the following terms shall mean:

- 2.1. **Public Document** – refers to affidavit of recognition executed by the father such as the Affidavit of Admission of Paternity or the Affidavit of Acknowledgment.
- 2.2. **Private Handwritten Instrument** – an instrument executed in the handwriting of the father and duly signed by him where he expressly recognizes paternity to the child.
- 2.3. **Local Civil Registry Office (LCRO)** – a department in the city/municipal government mandated to perform civil registration functions.
- 2.4. **Office of the Civil Registrar General (OCRG)** – refers to the national government office mandated to carry out and administer the provisions of the laws on civil registration headed by the Civil Registrar General who is also the Administrator of the National Statistics Office (NSO).
- 2.5. **Affidavit to Use the Surname of the Father (AUSF)** – an affidavit to be executed in order to use the surname of the father. The AUSF is a registrable document.
- 2.6. **Guardian** – refers to a person lawfully invested with the power, and charged with the duty, of taking care of one who, for defect of age, understanding, or self control, is considered incapable in administering his own affairs. This term also refers to those authorized to exercise substitute parental authority over the child in default of parents or a judicially appointed guardian (Title IX, Family Code). Those exercising substitute parental authority are the following:
 - 2.6.1. The surviving grandparent (Article 214, Family Code);
 - 2.6.2. The oldest brother or sister, over 21 years of age, unless unfit or disqualified (Article 216(2), Family Code); and
 - 2.6.3. The child’s actual custodian, over 21 years of age, unless unfit or disqualified (Article 216(3), Family Code).

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RULE 3 WHO MAY FILE

Under these Rules, the father, mother, child if of age, or the guardian, may file the public document or Affidavit to Use the Surname of the Father (AUSF) in order for the child to use the surname of the father.

RULE 4 WHERE TO FILE

- 4.1. The public document or AUSF executed within the Philippines shall be filed at the Local Civil Registry Office (LCRO) where the child was born, if the birth occurred within the Philippines.
- 4.2. The public document or AUSF executed outside the Philippines shall be filed at the LCRO of Manila, if the birth occurred within the Philippines.
- 4.3. The public document or AUSF whether executed within or outside the Philippines shall be filed at the LCRO of Manila, if the birth occurred outside the Philippines.

RULE 5 WHAT TO FILE

The following shall be filed at the LCRO:

- 5.1. Certificate of Live Birth with accomplished Affidavit of Acknowledgement/Admission of Paternity at the back
- 5.2. Public document
- 5.3. AUSF, including all supporting documents

RULE 6 WHEN TO REGISTER

The public document not made on the record of birth, or the AUSF shall be registered within 20 days from the date of execution at the place where the birth was registered. Otherwise the procedures of late registration shall be applied.

RULE 7 REQUIREMENTS FOR THE CHILD TO USE THE SURNAME OF THE FATHER

7.1. For Births Not Yet Registered

- 7.1.1. The illegitimate child shall use the surname of the father if a public document is executed by the father, either at the back of the Certificate of Live Birth or in a separate document.
- 7.1.2. If admission of paternity is made through a private handwritten instrument, the child shall use the surname of the father, provided the registration is supported by the following documents:
 - a. AUSF
 - b. Consent of the child, if 18 years old and over at the time of the filing of the document
 - c. Any two of the following documents showing clearly the paternity between the father and the child:

- 1) Employment records
- 2) SSS/GSIS records
- 3) Insurance
- 4) Certification of membership in any organization
- 5) Statement of Assets and Liabilities
- 6) Income Tax Return (ITR)

7.2. For Births Previously Registered under the Surname of the Mother

- 7.2.1. If filiation has been expressly recognized by the father, the child shall use the surname of the father upon the submission of the accomplished AUSF.
 - 7.2.2. If filiation has not been expressly recognized by the father, the child shall use the surname of father upon submission of a public document or a private handwritten instrument supported by the documents listed in Rule 7.1.2.
- 7.3.** Except in Item 7.2.1, the consent of the illegitimate child is required if he/she has reached the age of majority. The consent may be contained in a separate instrument duly notarized.

RULE 8

EFFECTS OF RECOGNITION

8.1. For Births Not Yet Registered

- 8.1.1. The surname of the father shall be entered as the last name of the child in the Certificate of Live Birth. The Certificate of Live Birth shall be recorded in the Register of Births.
- 8.1.2. If admission of paternity is done at the back of the Certificate of Live Birth, no annotation is made in the Certificate of Live Birth. However, annotation shall be made in the Register of Births as follows:
Acknowledged by (name of father) on (date) pursuant to RA No. 9255.
- 8.1.3. If admission of paternity is made in a separate public document, the proper annotation shall be made in the Certificate of Live Birth and the Register of Births. The annotation shall be as follows:
Acknowledged by (name of father) on (date) pursuant to RA No. 9255.
- 8.1.4. In case of delayed registration, follow the provisions under 8.1.1 to 8.1.3 and comply with the requirements under Rule 25 of Administrative Order No. 1 series of 1993. Proper annotation with regard to delayed registration shall be made.

8.2. For Births Previously Registered under the Surname of the Mother

- 8.2.1. If admission of paternity was made either at the back of the Certificate of Live Birth or in a separate public document or in a private handwritten document, the public document or AUSF shall be recorded in the Register of Legal Instruments. Proper annotation shall be made in the Certificate of Live Birth and the Register of Births as follows:

The surname of the child is hereby changed from (original surname) to (new surname) pursuant to RA No. 9255.

The original surname of the child appearing in the Certificate of Live Birth and Register of Births shall not be changed or deleted.

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- 8.2.2. If filiation was not expressly recognized at the time of registration, the public document or AUSF shall be recorded in the Register of Legal Instruments. Proper annotation shall be made in the Certificate of Live Birth and the Register of Births as follows:

Acknowledged by (name of father) on (date). The surname of the child is hereby changed from (original surname) to (new surname) on (date) pursuant to RA No. 9255.

RULE 9

ISSUANCE OF CERTIFIED COPY OF CERTIFICATE OF LIVE BIRTH AND LCR FORM 1A

In the issuance of the certified copy, proper annotations as provided under Rule 8 shall be made on the Certificate of Live Birth or on the certified transcription (LCR Form 1A) from the Register of Births.

RULE 10

DUTIES OF THE LOCAL CIVIL REGISTRAR

- 10.1. Examines the authenticity of the Certificate of Live Birth and/or ascertains the truth of the facts stated in the affidavit and the documents presented.
- 10.2. Accepts for registration the following documents:
 - a. Certificate of Live Birth
 - b. Public document
 - c. AUSF
- 10.3. Records the entries in the Certificate of Live Birth in the Register of Births, and the public document and AUSF in the Register of Legal Instruments.
- 10.4. Annotates the Certificate of Live Birth and the remarks portion of the Register of Births.
- 10.5. Issues certified copies of Certificate of Live Birth or certified transcription (LCR form 1A) with annotations.
- 10.6. Distributes the annotated Certificate of Live Birth, registered public document or AUSF including any supporting document as follows:
 - a. First copy to owner of the document;
 - b. Second copy to the OCRG;
 - c. Third copy to the LCRO.

RULE 11

RETROACTIVITY CLAUSE

These Rules shall have retroactive effect for all births occurring within and outside the Philippines.

RULE 12

SEPARABILITY CLAUSE

If any portion or provision of this Implementing Rules and Regulations is declared void or unconstitutional, the remaining portions or provisions thereof shall not be effected by such declaration.

RULE 13
REPEALING CLAUSE

All circulars, memoranda, rules and regulations or parts thereof inconsistent with the provisions of these Rules are hereby repealed or modified accordingly.

RULE 14
EFFECTIVITY

These Rules shall take effect 15 days after its publication in a newspaper of general circulation in the Philippines.

Approved this 14th day of May 2004.

REPUBLIC ACT No. 9262

AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

Approved on March 8, 2004

SECTION 1. Short Title. – This Act shall be known as the “*Anti-Violence Against Women and Their Children Act of 2004.*”

SEC. 2. Declaration of Policy. – It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members, particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

SEC. 3. Definition of Terms. – As used in this Act,

- (a) *Violence against women and their children* refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:
- A. *Physical violence* refers to acts that include bodily or physical harm;
 - B. *Sexual violence* refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
 - a. Rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
 - b. Acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
 - c. Prostituting the woman or child.
 - C. *Psychological violence* refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.
 - D. *Economic abuse* refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:
 - 1. Withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
 - 2. Deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;

3. Destroying household property;
 4. Controlling the victims' own money or properties or solely controlling the conjugal money or properties.
- (b) *Battery* refers to an act of inflicting physical harm upon the woman or her child resulting to physical and psychological or emotional distress.
- (c) *Battered Woman Syndrome* refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.
- (d) *Stalking* refers to an intentional act committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof.
- (e) *Dating relationship* refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship.
- (f) *Sexual relations* refers to a single sexual act which may or may not result in the bearing of a common child.
- (g) *Safe place or shelter* refers to any home or institution maintained or managed by the Department of Social Welfare and Development (DSWD) or by any other agency or voluntary organization accredited by the DSWD for the purposes of this Act or any other suitable place the resident of which is willing temporarily to receive the victim.
- (h) *Children* refer to those below 18 years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610. As used in this Act, it includes the biological children of the victim and other children under her care.

SEC. 4. Construction. – This Act shall be liberally construed to promote the protection and safety of victims of violence against women and their children.

SEC 5. Acts of Violence Against Women and Their Children. – The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
 - (1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
 - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - (3) Depriving or threatening to deprive the woman or her child of a legal right;
 - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

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- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
 - (1) Stalking or following the woman or her child in public or private places;
 - (2) Peering in the window or lingering outside the residence of the woman or her child;
 - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
 - (5) Engaging in any form of harassment or violence;
- (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

SEC. 6. Penalties. – The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

- (a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of *prision mayor*; those constituting less serious physical injuries shall be punished by *prision correccional*; and those constituting slight physical injuries shall be punished by *arresto mayor*.

Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than *arresto mayor*.

- (b) Acts falling under Section 5(c) and 5(d) shall be punished by *arresto mayor*;
- (c) Acts falling under Section 5(e) shall be punished by *prision correccional*;
- (d) Acts falling under Section 5(f) shall be punished by *arresto mayor*;
- (e) Acts falling under Section 5(g) shall be punished by *prision mayor*;
- (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this Section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One Hundred Thousand Pesos (P100,000) but not more than Three Hundred Thousand Pesos (P300,000); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

SEC. 7. Venue. – The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant.

SEC. 8. Protection Orders. – A protection order is an order issued under this Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief.

The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

- (a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;
- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;
- (d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (f) Granting a temporary or permanent custody of a child/children to the petitioner;
- (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer and for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on matter;
- (i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, child care expenses and loss of income;
- (j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and
- (k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

Any of the reliefs provided under this Section shall be granted even in the absence of a decree of legal separation or annulment or declaration of absolute nullity of marriage.

The issuance of a BPO or the pendency of an application for a BPO shall not preclude a petitioner from applying for, or the court from granting a TPO or PPO.

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SEC. 9. Who May File Petition for Protection Orders. – A petition for protection order may be filed by any of the following:

- (a) The offended party;
- (b) Parents or guardians of the offended party;
- (c) Ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- (d) Officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) Police officers, preferably those in charge of women and children's desks;
- (f) *Punong Barangay* or *Barangay Kagawad*;
- (g) Lawyer, counselor, therapist or healthcare provider of the petitioner;
- (h) At least two concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who have personal knowledge of the offense committed.

SEC. 10. Where to Apply for a Protection Order. – Applications for BPOs shall follow the rules on venue under Section 409 of the Local Government Code of 1991 and its implementing rules and regulations. An application for a TPO or PPO may be filed in the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, Municipal Circuit Trial Court with territorial jurisdiction over the place of residence of the petitioner: *Provided, however,* That if a family court exists in the place of residence of the petitioner, the application shall be filed with that court.

SEC. 11. How to Apply for a Protection Order. – The application for a protection order must be in writing, signed and verified under oath by the applicant. It may be filed as an independent action or as incidental relief in any civil or criminal case the subject matter or issues thereof partakes of a violence as described in this Act. A standard protection order application form, written in English with translation to the major local languages, shall be made available to facilitate applications for protection orders, and shall contain, among others, the following information:

- (a) Names and addresses of petitioner and respondent;
- (b) Description of relationships between petitioner and respondent;
- (c) A statement of the circumstances of the abuse;
- (d) Description of the reliefs requested by petitioner as specified in Section 8 herein;
- (e) Request for counsel and reasons for such;
- (f) Request for waiver of application fees until hearing; and
- (g) An attestation that there is no pending application for a protection order in another court.

If the applicant is not the victim, the application must be accompanied by an affidavit of the applicant attesting to (a) the circumstances of the abuse suffered by the victim and (b) the circumstances of consent given by the victim for the filing of the application. When disclosure of the address of the victim will pose danger to her life, it shall be so stated in the application. In such a case, the applicant shall attest that the victim is residing in the municipality or city over which court has territorial jurisdiction, and shall provide a mailing address for purposes of service processing.

An application for protection order filed with a court shall be considered an application for both a TPO and PPO.

Barangay officials and court personnel shall assist applicants in the preparation of the application. Law enforcement agents shall also extend assistance in the application for protection orders in cases brought to their attention.

SEC. 12. Enforceability of Protection Orders. – All TPOs and PPOs issued under this Act shall be enforceable anywhere in the Philippines and a violation thereof shall be punishable with a fine ranging from Five Thousand Pesos (P5,000) to Fifty Thousand Pesos (P50,000) and/or imprisonment of six months.

SEC. 13. Legal Representation of Petitioners for a Protection Order. – If the woman or her child requests in the applications for a protection order for the appointment of counsel because of lack of economic means to hire a counsel *de parte*, the court shall immediately direct the Public Attorney’s Office (PAO) to represent the petitioner in the hearing on the application. If the PAO determines that the applicant can afford to hire the services of a counsel *de parte*, it shall facilitate the legal representation of the petitioner by a counsel *de parte*. The lack of access to family or conjugal resources by the applicant, such as when the same are controlled by the perpetrator, shall qualify the petitioner to legal representation by the PAO.

However, a private counsel offering free legal service is not barred from representing the petitioner.

SEC. 14. Barangay Protection Orders (BPOs); Who May Issue and How. – Barangay Protection Orders (BPOs) refer to the protection order issued by the *Punong Barangay* ordering the perpetrator to desist from committing acts under Section 5(a) and (b) of this Act. A *Punong Barangay* who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after *ex parte* determination of the basis of the application. If the *Punong Barangay* is unavailable to act on the application for a BPO, the application shall be acted upon by any available *Barangay Kagawad*. If the BPO is issued by a *Barangay Kagawad* the order must be accompanied by an attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time for the issuance of the BPO. BPOs shall be effective for 15 days. Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay* or *Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the *Punong Barangay*.

SEC. 15. Temporary Protection Orders. – Temporary Protection Orders (TPOs) refer to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for 30 days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

SEC. 16. Permanent Protection Orders. – Permanent Protection Order (PPO) refers to protection order issued by the court after notice and hearing.

Respondent’s non-appearance despite proper notice, or his lack of a lawyer, or the non-availability of his lawyer shall not be a ground for rescheduling or postponing the hearing on the merits of the issuance of a PPO. If the respondent appears without counsel on the date of the hearing on the PPO, the court shall appoint a lawyer for the respondent and immediately proceed with the hearing. In case the respondent fails to appear despite proper notice, the court shall allow *ex parte* presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the application is made.

The court shall, to the extent possible, conduct the hearing on the merits of the issuance of a PPO in one day. Where the court is unable to conduct the hearing within one day and the TPO issued is due to expire, the court shall continuously extend or renew the TPO for a period of 30 days at each particular time until final judgment is issued. The extended or renewed TPO may be modified by the court as may be necessary or applicable to address the needs of the applicant.

The court may grant any, some or all of the reliefs specified in Section 8 hereof in a PPO. A PPO shall be effective until revoked by a court upon application of the person in whose favor the order was issued. The court shall ensure immediate personal service of the PPO on respondent.

The court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application.

Regardless of the conviction or acquittal of the respondent, the Court must determine whether or not the PPO shall become final. Even in a dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

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SEC. 17. Notice of Sanction in Protection Orders. – The following statement must be printed in bold-faced type or in capital letters on the protection order issued by the *Punong Barangay* or court:

Violation of this order is punishable by law.

SEC. 18. Mandatory Period for Acting on Applications for Protection Orders. – Failure to act on an application for a protection order within the reglementary period specified in the previous sections without justifiable cause shall render the official or judge administratively liable.

SEC. 19. Legal Separation Cases. – In cases of legal separation, where violence as specified in this Act is alleged, Article 58 of the Family Code shall not apply. The court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the mandatory period specified in this Act.

SEC. 20. Priority of Applications for a Protection Order. – *Ex parte* and adversarial hearings to determine the basis of applications for a protection order under this Act shall have priority over all other proceedings. Barangay officials and the courts shall schedule and conduct hearings on applications for a protection order under this Act above all other business and, if necessary, suspend other proceedings in order to hear applications for a protection order.

SEC. 21. Violation of Protection Orders. – A complaint for a violation of a BPO issued under this Act must be filed directly with any Municipal Trial Court, Metropolitan Trial Court, or Municipal Circuit Trial Court that has territorial jurisdiction over the *barangay* that issued the BPO. Violation of a BPO shall be punishable by imprisonment of 30 days without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

A judgment of violation of a BPO may be appealed according to the Rules of Court. During trial and upon judgment, the trial court may *motu proprio* issue a protection order as it deems necessary without need of an application.

Violation of any provision of a TPO or PPO issued under this Act shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

SEC. 22. Applicability of Protection Orders to Criminal Cases. – The foregoing provisions on protection orders shall be applicable in criminal cases and/or shall be included in the civil actions deemed impliedly instituted with the criminal actions involving violence against women and their children.

SEC. 23. Bond to Keep the Peace. – The Court may order any person against whom a protection order is issued to give a bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented.

Should the respondent fail to give the bond as required, he shall be detained for a period which shall in no case exceed six months, if he shall have been prosecuted for acts punishable under Sections 5(a) to 5(f) and not exceeding 30 days, if for acts punishable under Section 5(g) to 5(i).

The protection orders referred to in this Section are the TPOs and the PPOs issued only by the courts.

SEC. 24. Prescriptive Period. – Acts falling under Sections 5(a) to 5(f) shall prescribe in 20 years. Acts falling under Sections 5(g) to 5(i) shall prescribe in 10 years.

SEC. 25. Public Crime. – Violence against women and their children shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.

SEC. 26. *Battered Woman Syndrome as a Defense.* – Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/psychologists.

SEC. 27. *Prohibited Defense.* – Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under this Act.

SEC. 28. *Custody of Children.* – The woman victim of violence shall be entitled to the custody and support of her child/children. Children below 7 years old or older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

A victim who is suffering from battered woman syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the perpetrator of a woman who is suffering from battered woman syndrome.

SEC. 29. *Duties of Prosecutors/Court Personnel.* – Prosecutors and court personnel should observe the following duties when dealing with victims under this Act:

- a. Communicate with the victim in a language understood by the woman or her child; and
- b. Inform the victim of her/his rights including legal remedies available and procedure, and privileges for indigent litigants.

SEC. 30. *Duties of Barangay Officials and Law Enforcers.* – Barangay officials and law enforcers shall have the following duties:

- a. Respond immediately to a call for help or request for assistance or protection of the victim by entering the dwelling if necessary whether or not a protection order has been issued and ensure the safety of the victim/s;
- b. Confiscate any deadly weapon in the possession of the perpetrator or within plain view;
- c. Transport or escort the victim/s to a safe place of their choice or to a clinic or hospital;
- d. Assist the victim in removing personal belongings from the house;
- e. Assist the barangay officials and other government officers and employees who respond to a call for help;
- f. Ensure the enforcement of the Protection Orders issued by the *Punong Barangay* or by the courts;
- g. Arrest the suspected perpetrator without a warrant when any of the acts of violence defined by this Act is occurring, or when he/she has personal knowledge that any act of abuse has just been committed, and there is imminent danger to the life or limb of the victim as defined in this Act; and
- h. Immediately report the call for assessment or assistance of the DSWD, Social Welfare Department of LGUs or accredited non-government organizations (NGOs).

Any barangay official or law enforcer who fails to report the incident shall be liable for a fine not exceeding Ten Thousand Pesos (P10,000) or whenever applicable criminal, civil or administrative liability.

SEC. 31. *Healthcare Provider Response to Abuse.* – Any healthcare provider, including, but not limited to, an attending physician, nurse, clinician, barangay health worker, therapist or counselor who suspects abuse or has been informed by the victim of violence shall:

- a. Properly document any of the victim's physical, emotional or psychological injuries;
- b. Properly record any of victim's suspicions, observations and circumstances of the examination or visit;
- c. Automatically provide the victim free of charge a medical certificate concerning the examination or visit;

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- d. Safeguard the records and make them available to the victim upon request at actual cost; and
- e. Provide the victim immediate and adequate notice of rights and remedies provided under this Act, and services available to them.

SEC. 32. *Duties of Other Government Agencies and LGUs.* – Other government agencies and LGUs shall establish programs such as, but not limited to, education and information campaign and seminars or symposia on the nature, causes, incidence and consequences of such violence particularly towards educating the public on its social impacts.

It shall be the duty of the concerned government agencies and LGUs to ensure the sustained education and training of their officers and personnel on the prevention of violence against women and their children under the Act.

SEC. 33. *Prohibited Acts.* – A *Punong Barangay, Barangay Kagawad* or the court hearing an application for a protection order shall not order, direct, force or in any way unduly influence the applicant for a protection order to compromise or abandon any of the reliefs sought in the application for protection under this Act. Section 7 of the Family Courts Act of 1997 and Sections 410, 411, 412, and 413 of the Local Government Code of 1991 shall not apply in proceedings where relief is sought under this Act.

Failure to comply with this Section shall render the official or judge administratively liable.

SEC. 34. *Persons Intervening Exempt from Liability.* – In every case of violence against women and their children as herein defined, any person, private individual or police authority or barangay official who, acting in accordance with law, responds or intervenes without using violence or restraint greater than necessary to ensure the safety of the victim, shall not be liable for any criminal, civil or administrative liability resulting therefrom.

SEC. 35. *Rights of Victims.* – In addition to their rights under existing laws, victims of violence against women and their children shall have the following rights:

- a. To be treated with respect and dignity;
- b. To avail of legal assistance from the PAO of the Department of Justice (DOJ) or any public legal assistance office;
- c. To be entitled to support services from the DSWD and LGUs;
- d. To be entitled to all legal remedies and support as provided for under the Family Code; and
- e. To be informed of their rights and the services available to them including their right to apply for a protection order.

SEC. 36. *Damages.* – Any victim of violence under this Act shall be entitled to actual, compensatory, moral and exemplary damages.

SEC. 37. *Hold Departure Order.* – The court shall expedite the process of issuance of a hold departure order in cases prosecuted under this Act.

SEC. 38. *Exemption from Payment of Docket Fee and Other Expenses.* – If the victim is an indigent or there is an immediate necessity due to imminent danger or threat of danger to act on an application for a protection order, the court shall accept the application without payment of the filing fee and other fees and of transcript of stenographic notes.

SEC. 39. *Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC).* – In pursuance of the abovementioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their Children, hereinafter known as the Council, which shall be composed of the following agencies:

- a. Department of Social Welfare and Development (DSWD);
- b. National Commission on the Role of Filipino Women (NCRFW);

- c. Civil Service Commission (CSC);
- d. Council for the Welfare of Children (CWC);
- e. Department of Justice (DOJ);
- f. Department of the Interior and Local Government (DILG);
- g. Philippine National Police (PNP);
- h. Department of Health (DOH);
- i. Department of Education (DepEd);
- j. Department of Labor and Employment (DOLE); and
- k. National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.

The Council members may designate their duly authorized representative who shall have a rank not lower than an assistant secretary or its equivalent. These representatives shall attend Council meetings in their behalf, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

SEC. 40. *Mandatory Programs and Services for Victims.* – The DSWD and LGUs shall provide the victims temporary shelters, provide counseling, psychosocial services and/or, recovery, rehabilitation programs and livelihood assistance.

The DOH shall provide medical assistance to victims.

SEC. 41. *Counseling and Treatment of Offenders.* – The DSWD shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement.

SEC. 42. *Training of Persons Involved in Responding to Violence Against Women and Their Children Cases.* – All agencies involved in responding to violence against women and their children cases shall be required to undergo education and training to acquaint them with:

- a. the nature, extent and causes of violence against women and their children;
- b. the legal rights of, and remedies available to, victims of violence against women and their children;
- c. the services and facilities available to victims or survivors;
- d. the legal duties imposed on police officers to make arrest and to offer protection and assistance; and
- e. techniques for handling incidents of violence against women and their children that minimize the likelihood of injury to the officer and promote the safety of the victim or survivor.

The PNP, in coordination with LGUs, shall establish an education and training program for police officers and barangay officials to enable them to properly handle cases of violence against women and their children.

SEC. 43. *Entitlement to Leave.* – Victims under this Act shall be entitled to take a paid leave of absence up to 10 days in addition to other paid leaves under the Labor Code and Civil Service Rules and Regulations, extendible when the necessity arises as specified in the protection order.

Any employer who shall prejudice the right of the person under this Section shall be penalized in accordance with the provisions of the Labor Code and Civil Service Rules and Regulations. Likewise, an employer who shall prejudice any person for assisting a co-employee who is a victim under this Act shall likewise be liable for discrimination.

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SEC. 44. Confidentiality. – All records pertaining to cases of violence against women and their children including those in the *barangay* shall be confidential and all public officers and employees and public or private clinics or hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court.

Any person who violates this provision shall suffer the penalty of one year imprisonment and a fine of not more than Five Hundred Thousand Pesos (P500,000).

SEC. 45. Funding. – The amount necessary to implement the provisions of this Act shall be included in the annual General Appropriations Act (GAA).

The Gender and Development (GAD) Budget of the mandated agencies and LGU's shall be used to implement services for victims of violence against women and their children.

SEC. 46. Implementing Rules and Regulations. – Within six months from the approval of this Act, the DOJ, the NCRFW, the DSWD, the DILG, the DOH, and the PNP, and three representatives from NGOs to be identified by the NCRFW, shall promulgate the Implementing Rules and Regulations (IRR) of this Act.

SEC. 47. Suppletory Application. – For purposes of this Act, the Revised Penal Code and other applicable laws, shall have suppletory application.

SEC. 48. Separability Clause. – If any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions shall not be affected.

SEC. 49. Repealing Clause. – All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 50. Effectivity. – This Act shall take effect 15 days from the date of its complete publication in at least two newspapers of general circulation.

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9262, OTHERWISE KNOWN AS THE “ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004”

Pursuant to Section 46 of Republic Act No. 9262, “An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes” otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004,” the following rules and regulations, having been approved by the Inter-Agency Council on Violence Against Women and Their Children and the Implementing Rules and Regulations (IRR) Committee are hereby promulgated:

RULE I GENERAL PROVISIONS

SECTION 1. Title. – These Rules shall be known and cited as “The Rules and Regulations Implementing the Anti-Violence Against Women and Their Children Act of 2004.”

SEC. 2. Purpose. – These Rules and Regulations are hereby promulgated to prescribe the guidelines and procedures for the implementation of Republic Act No. 9262 in order to ensure that women and their children have effective access to justice and to services and programs. These Rules and Regulations shall serve as the minimum guidelines and standards for service providers including government officials and personnel of national government agencies and local government units.

SEC. 3. Declaration of Policies. – It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and other international human rights instruments to which the Philippines is a party.

SEC. 4. Construction. – These Rules and Regulations shall be liberally construed to promote the protection and safety of victims of violence against women and their children (VAWC). All doubts in the implementation and interpretation hereof shall be resolved in favor of women and their children consistent with the spirit and letter of the law.

RULE II DEFINITION OF TERMS

SECTION 5. Definition of Terms. – As used in these Rules and Regulations, unless the context otherwise requires, the following terms shall be understood to mean:

- (a) *Act* – refers to the Republic Act No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004”;
- (b) *Council* – refers to the Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC) created under Section 39 of the Act;
- (c) *Violence Against Women and Their Children* – refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which results in or is likely to result in physical, sexual,

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psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

1. *Physical violence* refers to acts that include bodily or physical harm;
 2. *Sexual violence* refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
 - a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
 - b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion; and
 - c) prostituting the woman or her child.
 3. *Psychological violence* refers to acts or omissions causing or likely to cause mental or emotional suffering to the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse, and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.
 4. *Economic abuse* refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:
 - a) withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
 - b) deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
 - c) destroying household property; and
 - d) controlling the victim's own money or properties or solely controlling the conjugal money or properties.
- (d) *Battery* – refers to an act of inflicting physical harm upon the woman or her child resulting to physical and psychological or emotional distress.
- (e) *Battered Woman Syndrome* – refers to a scientifically defined pattern of psychological and behavioral symptoms that have resulted from cumulative abuse found in women living in battering relationships.
- (f) *Stalking* – refers to an intentional act committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof.
- (g) *Dating relationship* – refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship.
- (h) *Sexual relation* – refers to a single sexual act which may or may not result in the bearing of a common child.
- (i) *Safe Place or Shelter* – refers to any home or institution maintained or managed by the Department of Social Welfare and Development (DSWD) or by any other agency or voluntary organization accredited by the DSWD for the purposes of the Act or any other suitable place the resident of which is willing to temporarily receive the victim.

- (j) *Children* – refer to those below 18 years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610. As used in the Act, it includes the biological or adopted children of the victim and other children under her care including foster children, relatives or other children who live with her.
- (k) *Psychosocial services* – refer to the provision of help or support for the total well-being of an individual who has suffered as a result of physical harm and psychological or emotional distress that further resulted in an unpleasant or traumatic experience. The services are provided to restore the impaired physical, social, emotional, psychological, and spiritual aspects of the person to ensure the victims' safety and security, and involves the process of recovery and re-integration into community life.
- (l) *Victim-survivor* – refers to the women and children victims of VAWC.

RULE III
PUNISHABLE ACTS

SECTION 6. Public Crime. – Violence against women and their children shall be considered a public offense, which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.

SEC. 7. Acts of Violence Against Women and Their Children. – The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or her child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
 1. Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;
 2. Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 3. Depriving or threatening to deprive the woman or her child of a legal right;
 4. Preventing the woman in engaging in any legitimate profession, occupation, business or activity, or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to the following acts:

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1. Stalking or following the woman or her child in public or private places;
 2. Peering in the window or lingering outside the residence of the woman or her child;
 3. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 4. Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child;
 5. Engaging in any form of harassment or violence; and
- (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

SEC. 8. Penalties. – In relation to Section 7 hereof, the acts complained of are punishable with the provisions set forth in this Section:

- (a) Acts falling under Section 7(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of *prision mayor*;¹ those constituting less serious physical injuries shall be punished by *prision correccional*;² and those constituting slight physical injuries shall be punished by *arresto mayor*.
- (b) Acts falling under Section 7(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than *arresto mayor*.³
- (c) Acts falling under Section 7(c) and 7(d) shall be punished by *arresto mayor*;
- (d) Acts falling under Section 7(e) shall be punished by *prision correccional*,
- (e) Acts falling under Section 7(f) shall be punished by *arresto mayor*;
- (f) Acts falling under Section 7(g) shall be punished by *prision mayor*;
- (g) Acts falling under Section 7(h) and Section 7(i) shall be punished by *prision mayor*.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this Section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One Hundred Thousand Pesos (P100,000) but not more than Three Hundred Thousand Pesos (P300,000); and undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

SEC. 9. Prescriptive Period. – For punishable acts falling under Sections 7(a) to 7(f) of these Rules, the criminal complaint may be filed within 20 years from the occurrence or commission. Punishable acts falling under Section 7(g) to 7(i) of these Rules shall prescribe in 10 years.

SEC. 10. Venue. – The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of VAWC under the Act. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant.

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1. Imprisonment ranging from six years and one day to 12 years.
 2. Imprisonment ranging from six months and one day to six years.
 3. Imprisonment ranging from one month and one day to six months.

RULE IV
PROTECTION ORDERS

SECTION 11. Protection Order. – The victim-survivor may obtain the remedy of a protection order from the *barangay* or from the court. A protection order is an order issued under the Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 7 of these Rules and granting other necessary reliefs. The relief granted under a protection order should serve the purpose of safeguarding the victim-survivor from further harm, minimizing any disruption in the victim-survivor’s daily life, and facilitating the opportunity and ability of the victim-survivor to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection order that may be issued by the *barangay* shall be known as a Barangay Protection Order (BPO). The protection order that may be issued by the court may be a Temporary Protection Order (TPO) or a Permanent Protection Order (PPO).

SEC. 12. Who May File for Protection Orders.

- (a) The offended party;
- (b) Parents or guardians of the offended party;
- (c) Ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- (d) Officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) Police officers, preferably those in charge of women and children’s desks;
- (f) *Punong Barangay* or *Barangay Kagawad*;
- (g) Lawyer, counselor, therapist or healthcare provider of the petitioner; and
- (h) At least two concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.

SEC. 13. Barangay Protection Orders. – Barangay Protection Orders (BPOs) refer to the protection order issued by the *barangay* ordering the perpetrator/respondent to desist from committing acts under Section 7(a) and (b) of these Rules. These are causing (a) physical harm to the woman or her child; and (b) threatening to cause the woman or her child physical harm.

The reliefs that may be granted under the BPO are the following:

- (a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the following acts mentioned in Section 7(a) and (b) of these Rules; and
- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the victim-survivor, directly or indirectly.

SEC. 14. How to Apply for a Barangay Protection Order.

- (a) The application for a BPO shall be in writing, signed by the victim-survivor/petitioner, and in a language understood by her/him. It shall be attested before the *Punong Barangay* who has jurisdiction over the application. The *Punong Barangay* or *Kagawad* shall assist the victim survivor/petitioner in any application for a BPO. The *ex parte* determination on the application for a protection order shall have priority over all proceedings.
- (b) The *Punong Barangay* or *Kagawad* must issue the BPO on the same day of application, immediately upon the conclusion of the *ex parte* proceedings. The BPO shall state the last known address of the respondent, the date and time of issuance, and the protective remedies prayed for by the victim-survivor/petitioner pursuant to Section 13 hereof. If the *Punong Barangay* is unavailable to act on the application for a BPO, the application shall be acted upon by any available *Barangay Kagawad*. In such a case, the order must be accompanied by an

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attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time of the issuance of the BPO.

A BPO is granted *ex parte*, without notice and hearing to the respondent. The victim-survivor/petitioner may be accompanied by any non-lawyer advocate in the proceedings before the *Punong Barangay*. The *Punong Barangay* or *Kagawad*, law enforcers and other government agencies shall not mediate or conciliate or influence the victim-survivor/petitioner for a protection order to compromise or abandon the relief sought.

- (c) The BPOs shall be effective for 15 days. Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay* or *Barangay Kagawad* shall personally serve a copy of the same to the respondent, or direct any barangay official to effect its personal service. The BPO is deemed served upon receipt thereof by the respondent or by any adult who received the BPO at the address of the respondent. In case the respondent or any adult at the residence of the respondent refuses, for whatever cause to receive the BPO, it shall likewise be deemed served by leaving a copy of the BPO at the said address in the presence of at least two witnesses. The barangay official serving the BPO must issue a certification setting forth the manner, place and date of service, including the reasons why the same remain unserved.
- (d) The BPO shall be issued free of charge. Within 24 hours after a BPO is issued, the *Punong Barangay*, or in her/his absence or inability, any available *Barangay Kagawad* shall assist the victim-survivor/petitioner in filing for an application for a TPO or PPO with the nearest court in the place of residence of the victim-survivor. If there is no Family Court or Regional Trial Court, the application may be filed in the Municipal Trial Court, the Municipal Circuit Trial Court or the Metropolitan Trial Court. For indigent petitioner, the *barangay* shall ensure that transportation and other expenses are provided for in filing for an application for a protection order with the courts.
- (e) The *Punong Barangay* or *Kagawad*, or the Barangay Secretary, shall record all BPOs in a logbook specifically for cases of VAWC. This logbook is confidential and must be kept from the public especially the media. They shall submit a quarterly report of all BPOs issued to the local office of the Department of the Interior and Local Government (DILG). The DILG shall submit a summary report of the BPOs issued to the Secretariat of the Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC). The BPO and the Compliance Monitoring Forms are herein appended.
- (f) All BPOs shall be enforceable within the *barangay* that issued the BPO. The *Punong Barangay* shall furnish a copy of all BPOs to the Philippine National Police-Women and Children Protection Desks (PNP-WCPD) who has jurisdiction in the city or municipality and shall be entered in a logbook for that purpose.
- (g) The issuance of a BPO or the pendency of an application for a BPO shall not preclude the victim-survivor/petitioner from applying for, or the court from granting, a TPO or PPO. However, where a Temporary Protection has already been granted by any court, the barangay official may no longer issue a BPO.

SEC. 15. Where to Apply for a BPO. – Applications for BPOs shall follow the rules on venue under Section 409 of the Local Government Code of 1991 and its implementing rules and regulations. Hence, it may be filed in the *barangay* where the victim-survivor/petitioner is located or resides.

If the parties reside in different municipalities or cities, the *Punong Barangay* or any *kagawad* of the *barangay* where the victim-survivor resides shall assist the victim-survivor/applicant in filing an application for a Protection Order from the court within two hours from the request.

The place of residence or location of the victim-survivor/ petitioner may include the place where the victim-survivor temporarily resides or where she sought refuge/sanctuary to escape from and avoid continuing violence from the respondent.

SEC. 16. Violation of a Barangay Protection Order. – A complaint for a violation of a BPO issued under the Act must be filed directly with any Municipal Trial Court, Metropolitan Trial Court, or Municipal Circuit Trial Court that has territorial jurisdiction over the *barangay* that issued the BPO. Violation of a BPO shall be punishable by imprisonment of 30 days without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

A complaint for a violation of a BPO shall be initiated by the *Punong Barangay* or *Kagawad* who issued the BPO and if he/she is no longer in office or is incapacitated, a complaint for a violation of the BPO may be filed by any barangay official. It shall be the primary responsibility of these barangay officials to initiate complaints for violations of BPOs.

In the event that the *Punong Barangay* or *Kagawad* or barangay official referred to in the preceding paragraph refuses to initiate a complaint for a violation of a BPO, the victim-survivor/ applicant shall have the right to file such complaint, without prejudice to the right to file appropriate administrative, civil or criminal action against the barangay official concerned.

A judgment of violation of a BPO may be appealed according to the Rules of Court. During trial and upon judgment, the trial court where the petition is filed may *motu proprio* issue a protection order as it deems necessary without need of an application.

SEC. 17. Temporary Protection Order. – Temporary Protection Order (TPO) refers to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in the Act and shall be effective for 30 days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service of notice. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

SEC. 18. Permanent Protection Order. – Permanent Protection Order (PPO) refers to protection order issued by the court after notice and hearing.

Respondent's non-appearance despite proper notice, or his lack of a lawyer, or the non-availability of his lawyer, shall not be a ground for rescheduling or postponing the hearing on the merits of the issuance of a PPO. If the respondent appears without counsel on the date of the hearing on the PPO, the court shall appoint a lawyer for the respondent and immediately proceed with the hearing. In case the respondent fails to appear despite proper notice, the court shall allow *ex parte* presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the application is made.

The court shall, to the extent possible, conduct the hearing on the merits of the issuance of a PPO in one day. Where the court is unable to conduct the hearing within one day and the TPO issued is due to expire, the court shall continuously extend or renew the TPO for a period of 30 days at each particular time until final judgment is issued. The extended or renewed TPO may be modified by the court as may be necessary or applicable to address the needs of the applicant.

The court may grant any, some or all of the reliefs specified in Section 19 hereof in a PPO. A PPO shall be effective until revoked by the court upon application of the person in whose favor the order was issued. The court shall ensure immediate personal service of the PPO on respondent.

The court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application.

Regardless of the conviction or acquittal of the respondent in a criminal prosecution under the Act, the Court must determine whether or not the PPO shall become final. Even in a dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

SEC. 19. The reliefs that may be granted under the TPO and PPO are the following:

- (a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 7 of these Rules;

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- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and, if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;
- (d) Directing the respondent to stay away from the petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by the petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that she is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (f) Granting temporary or permanent custody of a child/ children to the petitioner;
- (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer and for the same to be automatically remitted directly to the petitioner. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child/children without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate the offender and take appropriate action on the matter;
- (i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;
- (j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and
- (k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided the petitioner and any such designated family or household member consents to such relief.

Any of the reliefs provided under this Section shall be granted even in the absence of a decree of legal separation or annulment or declaration of absolute nullity of marriage.

SEC. 20. How to Apply for a Temporary and a Permanent Protection Order. – The application for a protection order must be in writing, signed and verified under oath by the applicant. It may be filed as an independent action or as an incidental relief in any civil or criminal case the subject matter or issues thereof partake of violence as described in the Act. A standard protection order application form, written in English with translation to the major local languages, shall be made available to facilitate application for protection orders, and shall contain, among others, the following information:

- (a) Names and addresses of petitioner and respondent;
- (b) Description of relationship between petitioner and respondent;
- (c) A statement of the circumstances of the abuse;

- (d) Description of the reliefs requested by petitioner as specified in Section 19 herein;
- (e) Request for counsel and reasons for such;
- (f) Request for waiver of application fees until hearing; and
- (g) An attestation that there is no pending application for a protection order in another court.

If the applicant is not the victim-survivor, the application must be accompanied by an affidavit of the applicant attesting to (a) the circumstances of the abuse suffered by the victim-survivor and (b) the circumstances of consent given by the victim-survivor for the filing of the application. When disclosure of the address of the victim-survivor/petitioner will pose danger to her life, it shall be so stated in the application. In such a case, the applicant shall attest that the victim-survivor/petitioner is residing in the municipality or city over which court has territorial jurisdiction, and shall provide a mailing address for purposes of service processing.

An application for protection order filed with a court shall be considered an application for both a TPO and a PPO.

Barangay officials and court personnel shall assist applicants in the preparation of the application. Law enforcement agents shall also extend assistance in the application for protection orders in cases brought to their attention.

SEC. 21. *Where to Apply for Temporary and Permanent Protection Orders.* – An application for a TPO or PPO may be filed in the Family Court or, if there is none, in the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, Municipal Circuit Trial Court in the place of residence of the petitioner.

The place of residence of the victim-survivor may include the place where she temporarily resides or where she sought refuge/sanctuary to escape from and avoid continuing violence from the respondent.

SEC. 22. *Enforceability of Temporary and Permanent Protection Orders.* – All TPOs and PPOs issued under the Act shall be enforceable anywhere in the Philippines and a violation thereof shall be punishable with a fine ranging from Five Thousand Pesos (P5,000) to Fifty Thousand Pesos (P50,000) and/or imprisonment of six months.

SEC. 23. *Violation of Temporary and Permanent Protection Orders.* – Violation of any provision of a TPO or a PPO issued under the Act shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

SEC. 24. *Applicability of Temporary and Permanent Protection Orders to Criminal Cases.* – The foregoing provisions on protection orders shall be applicable in criminal cases and/or shall be included in the civil actions deemed instituted with the criminal actions involving VAWC.

SEC. 25. *Legal Separation Cases.* – In cases of legal separation where violence as specified in the Act is alleged, Article 58 of the Family Code shall not apply. The Court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the mandatory period specified in the Act.

SEC. 26. *Bond to Keep the Peace.* – The Court may order any person against whom a protection order is issued to give a bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented.

Should the respondent fail to give the bond as required, he/ she shall be detained for a period which shall in no case exceed six months, if he/she shall have been prosecuted for acts punishable under Section 5(a) to 5(f) and not exceeding 30 days, if for acts punishable under Section 5(g) to 5(i) of the Act.

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Sec. 27. Prohibited Acts. – A *Punong Barangay*, *Barangay Kagawad*, or the court hearing an application for a protection order shall not order, direct, force or in any way unduly influence the applicant to compromise or abandon any of the reliefs sought in the application for protection order under the Act. Section 7 of the Family Courts Act of 1997 and Sections 410, 411, 412, and 413 of the Local Government Code of 1991 shall not apply in proceedings where relief is sought under the Act.

Failure to comply with this Section shall render the official or judge administratively liable.

Law enforcers and other government personnel shall not mediate or conciliate or influence the victim-survivor or applicant for a protection order to compromise or abandon the relief sought.

Sec. 28. Notice of Sanction in Protection Orders. – The following statement must be printed in bold-faced type or in capital letters on the protection order issued by the *Punong Barangay* or court:

Violation of this order is punishable by law.

Sec. 29. Priority of Applications for Protection Orders. – *Ex parte* and adversarial hearings to determine the basis of applications for a protection order under the Act shall have priority over all other proceedings. Barangay officials and the courts shall schedule and conduct hearings on applications for a protection order under the Act above all other business and, if necessary, suspend other proceedings in order to hear applications for a protection order.

Sec. 30. Mandatory Period for Acting on Applications for Protection Orders. – Failure to act on an application for a protection order within the reglamentary period specified in the previous sections without justifiable cause shall render the official or judge administratively liable.

Sec. 31. Protective Custody. – The DSWD, pursuant to Republic Act No. 7610, shall take protective custody of the abused child whether or not a protection order has been issued under the Act.

RULE V

LEGAL REMEDIES FOR VAWC VICTIM-SURVIVORS

SECTION 32. Battered Woman Syndrome as a Defense. – Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/psychologists.

Sec. 33. Prohibited Defense. – Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under the Act.

Sec. 34. Custody of Children. – The woman shall be entitled to the custody and support of her child/children. Children below seven years old or older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

A victim-survivor who is suffering from Battered Woman Syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the perpetrator of violence against a woman who is suffering from Battered Woman Syndrome.

Sec. 35. Damages. – Any victim-survivor of violence under the Act shall be entitled to actual, compensatory, moral and exemplary damages.

The civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed.

SEC. 36. Hold Departure Order. – The counsel for the victim-survivor or applicant may request the court for a Hold Departure Order in the application or petition for protection order. The court shall expedite the process of issuance of a hold departure order in cases prosecuted under the Act.

SEC. 37. Exemption from Payment of Docket Fee and Other Expenses. – If the victim-survivor is an indigent or there is an immediate necessity due to imminent danger or threat of danger to act on an application for a protection order, the court shall accept the application without payment of the filing fee and other fees and of transcript of stenographic notes.

RULE VI

MANDATORY PROGRAMS, SERVICES AND ENTITLEMENTS FOR VAWC VICTIM-SURVIVORS AND PERPETRATORS

SECTION 38. Rights of Victims. – In addition to their rights under existing laws, victim-survivors of VAWC shall have the following rights:

- (a) To be treated with respect and dignity;
- (b) To avail of legal assistance from the Public Attorneys Office (PAO) of the Department of Justice (DOJ) or any public legal assistance office including that of the LGUs where the woman or her child resides;
- (c) To be entitled to support services from the DSWD and LGUs;
- (d) To be entitled to all legal remedies and support as provided for under the Family Code; and
- (e) To be informed of their rights and the services available to them including their right to apply for a protection order.

SEC. 39. Mandatory Services and Entitlements for VAWC Victim-Survivors. – The following programs, benefits and appropriate services shall be available to victim-survivors and their children in order to facilitate their healing, recovery and social reintegration:

The DSWD and the LGUs shall:

- (a) Provide emergency shelter, psychosocial counseling and other rehabilitation services to victim-survivors of VAWC;
- (b) Ensure that service providers in institutions/centers for women and children are gender sensitive and uphold the rights of women and children;
- (c) Make available relevant skills training and other livelihood development services to victim-survivors of violence against women;
- (d) Ensure the successful social reintegration and after-care of victim-survivors and their children; and
- (e) Continue to develop relevant programs and strategies to ensure protection, healing, recovery and social reintegration and address emerging needs and concerns of victim-survivors of violence.

SEC. 40. Medical Assistance. – The following health programs and services shall immediately be provided through a socialized scheme by the Women and Children Protection Unit (WCPU) in DOH-retained hospitals or in coordination with LGUs or other government health facilities:

- (a) Complete physical and mental examinations;
- (b) Medical/Surgical treatment;
- (c) Psychological and psychiatric evaluation and treatment;
- (d) Hospital confinement when necessary;
- (e) Referral to specialty hospital and other concerned agency as needed;

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- (f) Manage the reproductive health concerns of victim-survivors of VAWC; and
- (g) If necessary, contact the DSWD or social worker of the LGU for emergency assistance to the woman and her child/children, or the police women and children concerns protection desk officer.

SEC. 41. *Counseling and Treatment of Offenders.* – The DSWD in partnership with non-government organizations (NGOs) and LGUs shall ensure effective psychosocial rehabilitation of perpetrators of VAWC, which includes, but not limited to, the following:

- (a) Development of policies and procedures relative to the delivery of rehabilitation services to perpetrators of violence, ensuring its effectiveness and efficiency;
- (b) Provision of appropriate training to City/Municipal Social Workers and other service providers who are implementing rehabilitative/treatment programs for perpetrators; and
- (c) Establishment of system of accreditation of counselors and rehabilitation programs in coordination with concerned institutions and the academe for regulatory purposes.

When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement. Specifically, offenders or perpetrators who were issued protection orders by the *Barangay* or the courts shall be subjected to mandatory rehabilitative counseling and treatment. Perpetrators to be covered by the program are those:

- (a) Referred either by the Philippine National Police-Women and Children Protection Desks, LGUs, NGOs, people's organizations (POs) and other community-based councils/groups working with victim-survivors of violence against women and children; and
- (b) Referred by concerned citizens or groups.

SEC. 42. *Ten-day Paid Leave in Addition to Other Leave Benefits.* – At any time during the application of any protection order, investigation, prosecution and/or trial of the criminal case, a victim of violence who is employed shall be entitled to a paid leave of up to 10 days in addition to other paid leaves under the Labor Code and Civil Service Rules and Regulations and other existing laws and company policies, extendible when the necessity arises as specified in the protection order. The *Punong Barangay/Kagawad* or prosecutor or the Clerk of Court, as the case may be, shall issue a certification at no cost to the woman that such an action is pending, and this is all that is required for the employer to comply with the 10-day paid leave. For government employees, in addition to the aforementioned certification, the employee concerned must file an application for leave citing as basis RA No. 9262. The administrative enforcement of this leave entitlement shall be considered within the jurisdiction of the Regional Director of the DOLE under Article 129 of the Labor Code of the Philippines, as amended, for employees in the private sector, and the Civil Service Commission, for government employees.

The availment of the 10 day-leave shall be at the option of the woman employee, which shall cover the days that she has to attend to medical and legal concerns. Leaves not availed of are noncumulative and not convertible to cash.

The employer/agency head who denies the application for leave, and who shall prejudice the victim-survivor or any person for assisting a co-employee who is a victim-survivor under the Act shall be held liable for discrimination and violation of RA No. 9262. The provision of the Labor Code and the Civil Service Rules and Regulations shall govern the penalty to be imposed on the said employer/agency head.

RULE VII

LEGAL PROTECTION FOR CONCERNED INDIVIDUALS

SECTION 43. *Persons Intervening Exempt from Liability.* – In every case of VAWC as herein defined, any person, private individual or police authority or barangay official who, acting in accordance with law, responds or intervenes without using violence or restraint greater than necessary to ensure the safety of the victim-survivor, shall not be liable for any criminal, civil or administrative liability resulting therefrom.

Workers of NGOs, POs, church, civic and other groups, be they Filipino citizens or foreigners, fall under “any person” and are free from any criminal or civil liability when acting in accordance with law in responding to a call for help or when assisting the victim-survivor.

SEC. 44. Protection of Service Providers. – In all cases, the privacy and identity as well as the locations of service providers, including NGOs and POs shall not be disclosed by any person who has knowledge of the VAWC cases.

SEC. 45. Rights of the Person Arrested, Investigated or Detained. – In all cases, the rights of the person arrested, investigated or detained as provided by the Philippine Constitution and under RA No. 7438 (*An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof*) shall, at all times, be respected.

RULE VIII

DUTIES AND FUNCTIONS OF GOVERNMENT AGENCIES, LOCAL GOVERNMENT UNITS, CONCERNED GOVERNMENT OFFICIALS AND PERSONNEL

SECTION 46. Duties and Functions of Prosecutors and Court Personnel. – Prosecutors and court personnel should observe the following duties when dealing with victims under the Act:

- (a) Communicate with the victim-survivor in a language understood by her or her child/children, bearing in mind their educational attainment; and
- (b) Inform the victim-survivor of her rights including legal remedies available and procedures, and privileges for indigent litigants.

SEC. 47. Duties and Functions of Barangay Officials. – In order to eliminate violence against women and their children, barangay officials shall:

- (a) Undertake an education program on Republic Act No. 9262 and on violence against women and their children and why it exists, the rights and remedies of victim-survivors, and the duties of residents and all barangay officials;
- (b) Have a family violence prevention program, including peer counseling for men;
- (c) Support organizing efforts and development programs for women in the community;
- (d) Prioritize livelihood projects for victim-survivors;
- (e) Involve women in planning and implementation of all programs and projects in the *barangay*;
- (f) Have an anti-VAWC desk officer in the *barangay* who shall coordinate a one-stop help desk. As much as possible, this help desk shall be open for 24 hours;
- (g) Ensure that all barangay officials, barangay health workers, barangay nutrition scholars, other barangay workers and *tanod* or barangay security officers undergo gender sensitivity seminars to enable them to respond to victims of violence;
- (h) Develop a system to document and report cases of VAWC and assistance program to victims thereof; and
- (i) If applicable/necessary, prescribe additional guidelines and standards provided that these are consistent with the Act.

The Barangay Officials shall strictly observe the following steps in handling VAWC cases at the *barangay* level:

- (a) Upon being informed of an act of VAWC, the barangay official shall immediately verify the information. If necessary, said official shall seek the assistance of the police;
- (b) Respond immediately to a call for help or request for assistance or protection of the victim-survivor by entering the dwelling whether or not a protection order has been issued and ensure the safety of the victim-survivors;

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- (c) Interview the victim-survivors and the witnesses to determine the facts, and inform the victim-survivors of their rights and remedies. To preserve the testimony of the victim-survivor and the witnesses, said official should document the interview in writing or record the testimonies by audio or videotape with the consent of the victim-survivor. All records pertaining to cases of VAWC including those in the *barangay* shall be confidential, and all public officers and employees and public or private clinics or hospitals shall respect the right to privacy of the victims;
- (d) Arrest the perpetrator even without a warrant when any of the acts of violence is occurring, or when said barangay official has personal knowledge that any act of abuse has just been committed, and in the presence of imminent danger to the life or limb of the victim-survivor. The barangay official shall confiscate any deadly weapon in the possession of the perpetrator or within plain view;
- (e) Transport or escort the victim-survivor to the nearest hospital, or available medical facility for treatment and medico-legal examination. Said official shall assist the victim-survivors to secure the medico-legal report;
- (f) If the perpetrator is not immediately arrested, advise him or her to temporarily leave the house to prevent violence, or encourage her/him to go to the barangay center, DSWD, LGU or NGO, church or other groups that provide counseling for perpetrators;
- (g) In the event that the victim-survivors have to be placed in a shelter or a safe place of their choice, the barangay official shall assist them in taking their personal belongings and taking their children and transfer them to a shelter or safe place;
- (h) Report the incident and refer the victim-survivor to the Local Social Welfare and Development Office of the LGU within four hours from the time of reporting. Said official shall also report the incident to the Women and Children's Protection Desk at the nearest Police Station within the same period;
- (i) In cases where the victim-survivor applying for a BPO is a minor, any barangay official shall assist the victim-survivor and shall refer her/him to NGOs, social workers for counseling, temporary shelter and other support services;
- (j) Monitor compliance of the respondent with the BPO;
- (k) Ensure the safety and continued support to the victim-survivor and her family during the 15-day period;
- (l) Assist the victim-survivors in filing the appropriate complaint with the PNP Women and Children's Protection Desk or other law enforcement agencies;
- (m) Ensure that all pertinent documents of the said cases are forwarded to the PNP Women and Children's Protection Desk;
- (n) Have a separate logbook for complaints and cases of VAWC and keep this confidential, always ensuring the privacy of the victims;
- (o) Shall not attempt to influence the victim-survivor to abandon her claims. All forms of amicable settlement under the *Katarungang Pambarangay* such as mediation, settlement, conciliation, arbitration shall not apply to cases of VAWC in the Act; and
- (p) If the relief requested or applied for involves the failure to provide support to the woman or her children, especially for their education and medical needs, the *Punong Barangay* or in his or her absence, any *Kagawad*, shall call the respondent for counseling and explain to him his legal obligations to support his wife and/or minor children. This shall not be construed to mean as a mode of conciliation or mediation and must be done only with the presence of the respondent, without the victim-survivor or applicant.

Any barangay official or law enforcer who fails to report the incident of VAWC to the PNP shall be liable for a fine not exceeding Ten Thousand Pesos (P10,000) or whenever applicable criminal, civil or administrative liability. Administrative complaints against the barangay official for failure to perform her or his duties shall be filed with the *Sangguniang Panglunsod* or *Bayan* for gross neglect of duty or misfeasance.

SEC. 48. Duties and Functions of the Philippine National Police–Women and Children Protection Desks (PNP-WCPD)

For the purposes of investigation of VAWC cases, the PNP-WCPD shall have the following duties and functions:

- (a) Upon the receipt of complaint, the WCPD officer shall conduct appropriate investigation which includes, but is not limited to, taking the formal statement of the victim and collecting other evidence necessary for the filing of the case under this Act;
- (b) Immediately after taking the essential elements of information during the course of investigation, the WCPD officer shall refer the victim-survivor to the nearest PNP Crime Laboratory and/or hospital or any medical facilities for appropriate medico-legal examination. It shall be the WCPD officer's duty to ensure that as far as possible, the examining physician must be of the same gender as the victim-survivor, especially in sexual violence cases;
- (c) Except in the case of a child who is a victim-survivor of the Act, by which other existing laws require immediate presence of the unoffending parent or guardian and social worker, only persons expressly authorized by the victim-survivor shall be allowed by the WCPD officer inside a room where police investigation as well as the medical/ physical examination are being conducted in private;
- (d) Ensure the confidentiality of identity of the victim-survivor and all other parties directly involved with the case under investigation. For this purpose, the WCPD officer must maintain a separate blotter on crimes committed under the Act. Under no circumstances shall any police officer allow media access to information concerning VAWC reported to PNP;
- (e) After the conduct of police investigation, the WCPD officer shall refer the victim-survivor to the social worker of the LGU, any available DSWD shelters, NGOs and other service providers for psychosocial intervention and other rehabilitation programs;
- (f) The WCPD officer shall forward the investigation report, together with the relevant evidence, including the formal statements of witnesses and result of medico-legal examination, to the prosecutor for filing of appropriate criminal action under the Act;
- (g) If victim-survivor is found to have manifestations of the Battered Woman Syndrome which is validated by past police records and testimonies from witnesses in interest, the WCPD officer shall inform the *punong barangay*, the local social worker, or the concerned NGOs, local professional or civic groups in the area for appropriate psychiatric and psychological evaluation which may form part of the evidence to be presented in court;
- (h) Assist in the application and enforcement of the provisions of the protection order as may be issued by the *barangay* or the court;
- (i) Respond, with the assistance of other police personnel, barangay officials, and other parties in interest, to a call for emergency assistance to ensure immediate protection of the victim-survivor by entering the dwelling if necessary whether or not a protection order has been issued;
- (j) In case where the perpetrator is armed or in possession of deadly weapon in plain view, cause the confiscation thereof with the assistance of other police personnel;
- (k) Effect the arrest of the perpetrator by virtue of a warrant issued by the court pursuant to existing laws. In the event that any crime under the Act has been committed, is being committed or about to be committed, or that any police officer has personal knowledge of the facts indicating the commission of such time, it shall be his or her duty to arrest the perpetrator even without the strength of a warrant, provided the offender shall be proceeded in accordance with Section 5, Rule 113 of the Rules of Court;
- (l) Except when the victim-survivor is deemed more secure to stay in their place of residence, in which case the perpetrator has been removed by virtue of protection order issued by the *barangay* or the court, the WCPD officer or any designated police officer shall provide assistance to help facilitate the transfer of the victim-survivor to a safe place of her own choice, including the removal of some of the victim-survivor's personal belongings;

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- (m) Monitor and follow up any case in violation of the Act that has been filed in court. In this regard, the WCPD officer must maintain a periodic assessment report of all cases reported to the police in violation of the Act; and
- (n) Participate in multidisciplinary mechanisms to help address the protection needs of the victim-survivor of VAWC.

SEC. 49. Duties and Functions of Healthcare Providers. – Any healthcare provider of public or private hospitals, clinics or rural health units, including, but not limited to, an attending physician, nurse, clinician, barangay health worker, therapist or counselor who suspects that a female patient or her children are victim-survivors of abuse shall:

- (a) Properly document any of the victim’s physical, emotional or psychological injuries; properly record their observation, emotional or psychological state and properly record any of victim’s complaints, observations and circumstances of the examination or visit;
- (b) Physicians in public hospitals and clinics or rural health unit shall automatically provide the victim free of charge a medical certificate concerning the examination or visit;
- (c) Safeguard the record and make them available to the victim upon request at actual cost;
- (d) Provide the victim immediate and adequate notice of rights and remedies provided under the Act, and the services available to them; and
- (e) Provide emergency care.

SEC. 50. Duties and Responsibilities of Other Relevant Agencies. – Other government agencies and LGUs shall establish programs such as, but not limited to, education and information campaign and seminars or symposia on the nature, causes, incidence and consequences of such violence particularly towards educating the public on its social impacts.

It shall be the duty of the concerned government agencies and LGUs to ensure the sustained education and training of their officers and personnel on the prevention of VAWC as provided for under the Act.

Consistent with their mandates under existing laws, the following agencies shall specifically integrate VAWC issues in their strategy and program formulation and implement programs and services for the prevention and elimination of VAWC and for the protection of VAWC victim-survivor.

(a) Philippine Information Agency (PIA)

1. Enhance public awareness on VAWC, pertinent laws and possible actions to prevent victimization and revictimization through the implementation of public advocacy program as well as printing and distribution of information materials in vernacular form;
2. Coordinate with the Council on public information campaigns in the provinces;
3. Help ensure that all concerned government agencies are informed of the Act;
4. Raise awareness of media practitioners in promoting non-stereotyped images of women and men, specially those that perpetuate violence;
5. Integrate VAWC core messages in the Code of Conduct and Ethical Guidelines for Reporting VAWC cases; and
6. Develop protocols in handling/reporting VAWC cases taking into consideration the privacy of the victim-survivors.

(b) Department of National Defense (DND)

1. Develop and implement Protocol on Handling Cases of VAWC under the Act and other related laws;
2. Collaborate with barangay officials, government and NGOs, church and civic groups in preventing VAWC;
3. Train its personnel on the use of its Protocol and periodically revise it to ensure effectiveness; and

4. Revise its administrative disciplinary measures for military and civilian personnel who are administratively or criminally charged with committing acts under the Act.

The Philippine Military Academy (PMA) including other military and civilian training institutions and schools shall include in its curriculum, RA No. 9262 and all gender-based violence related laws and protocols.

(c) National Statistical Coordination Board (NSCB)

1. Assist the Inter-agency Council on Violence Against Women (IAC-VAWC) in the development of a standardized gender-responsive documentation system on VAWC;
2. Periodically release statistical series on women and men in the Philippines, including VAWC statistics; and
3. Compile VAWC statistics from various government agencies, subject to the provision of resources under a specific budget line item in addition to the NSCB's regular budget.

(d) National Police Commission (NAPOLCOM)

1. Support national and international efforts towards eliminating VAWC and be actively involved in the drafting of practical measures, strategies and activities in the field of crime prevention and criminal justice administration for the elimination of VAWC;
2. Support programs that address problems and issues concerning women in the context of criminality, specifically as victim-survivors of VAWC crimes;
3. Conduct regional forum and seminar-workshop aimed to empower police officers through proper management;
4. Advocate for and strengthen the conduct of gender sensitivity training (GST) and education for criminal justice practitioners in order to enhance their competence in the management of the VAWC cases;
5. Establish Action Centers to receive complaints involving police officers nationwide;
6. Develop/adopt a gender-responsive protocol in handling VAWC cases particularly for police officers and their families;
7. Inspect and audit PNP Women's and Children's Protection Desks (WCPD) to assess compliance with established criteria and performance standards; and
8. Include in its rules for discipline of police personnel the penalty for those who committed VAWC.

(e) Bureau of Jail Management and Penology (BJMP)

1. Ensure the integration of VAWC core messages in all its policies, programs and projects;
2. Conduct sustained and regular education and training of their officers and personnel on the prevention of VAWC;
3. Develop reintegration and rehabilitation programs for VAWC perpetrators which shall focus on anger resolution and management, values reorientation, gender sensitivity, among others;
4. Strengthen and sustain partnership with DSWD for the conduct of training programs for service providers and implementation of rehabilitative programs for perpetrators; and
5. Develop program that addresses the needs of offenders with BWS.

(f) National Commission on Indigenous Peoples (NCIP)

1. Create mechanism to ensure the integration of gender and development perspective in the programs and projects of NCIP to eliminate VAWC in Ancestral Domains and Territories occupied by ICCs/IPs;
2. Coordinate with the member-agencies to effectively address the issues and concerns confronting the women and children of the ICCs/IPs as regards VAWC;
3. Issue recommendations to the President and/or Heads of Agencies concerning VAWC in areas of ICCs/IPs;

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4. Undertake information, education and advocacy campaign on VAWC with due respect to the culture, traditions, and institutions of ICCs/IPs and translate information materials into the vernacular form to ensure understanding of the Act; and
5. Create an ICC/IP Women Crisis Center in strategic areas where VAWC is rampant in Ancestral Domains and thereto provide ICC/IP contact persons who understand and can relate to their customs, beliefs and traditions.

(g) Office on Muslim Affairs (OMA)

1. Integrate gender and development perspective, especially VAWC core messages in the programs and projects related to the promotion, development and enhancement of Muslim culture and institutions;
2. Encourage participation of the *Imam* in addressing the issues related to VAWC in a gender-responsive manner;
3. To the extent possible, eliminate/amend discriminatory practices in Muslim Code of Personal Laws; and
4. Develop programs and projects to eliminate VAWC and other discriminatory practices among Muslims.

(h) Commission on Higher Education (CHED)

1. Encourage state colleges, universities, and private institutions to conduct capacity building initiatives for professors, school personnel and administrator to eliminate VAWC;
2. Integrate gender and development perspective, including the core messages on VAWC in school curricula; and
3. Integrate VAWC core messages in CHED's accreditation system.

(i) Technical Education and Skills Development Authority (TESDA)

1. Integrate gender and development perspective, specifically VAWC core messages in skills development programs;
2. Conduct capacity building activities addressing the issues of VAWC for TESDA instructors/trainers, personnel, and students;
3. Integrate VAWC core messages in the accreditation system for technical and vocational institutions; and
4. To the extent possible, provide scholarships to victim-survivors of VAWC.

SEC. 51. Duties and Functions of Local Government Units. – The LGUs shall have the following roles and responsibilities:

- (a) Undertake massive education and information on the Act and other related laws;
- (b) Provide the victim-survivors temporary shelters, counseling, psychosocial services, recovery and rehabilitation programs;
- (c) Ensure the sustained education and training of their officials and personnel on the prevention of VAWC under the Act, including gender sensitivity seminars for service providers including the police, barangay officials, health personnel and social workers;
- (d) In coordination with PNP and other related agencies, establish an education and training program for police officers and barangay officials to enable them to properly handle cases of VAWC;
- (e) Develop and provide relevant community-based services for the rescue, recovery/rehabilitation and after-care services of victim-survivors of VAWC;
- (f) Strengthen coordination with the DSWD-Development Regional Offices, LGUs, NGOs and other concerned institutions for women and children on the continuous conduct of VAWC related trainings to service providers;
- (g) Provision of sustained programs and projects to ensure the protection and effective services for rehabilitation and integration of VAWC victim-survivors;

- (h) Monitor and document cases of victims of VAWC for purposes of data banking;
- (i) Enact ordinances aimed at providing protection and support to victim-survivors of VAWC; and
- (j) Strengthen, re-activate and mobilize existing committees/ councils, similar organizations and special bodies at the provincial, city, municipal and barangay levels to prevent VAWC.

RULE IX

THE INTER-AGENCY COUNCIL ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN

SECTION 52. Creation. – The Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC) shall be established to: a) ensure the effective implementation of the law; and b) be the lead coordinator and monitoring body on VAWC initiatives.

SEC. 53. Composition. – The Council shall be composed of the following agencies:

- (a) Chairperson, Civil Service Commission (CSC);
- (b) Chairperson, Commission on Human Rights (CHR);
- (c) Secretary, Department of Education (DepEd);
- (d) Secretary, Department of Health (DOH);
- (e) Secretary, Department of the Interior and Local Government (DILG);
- (f) Secretary, Department of Justice (DOJ);
- (g) Secretary, Department of Labor and Employment (DOLE);
- (h) Secretary, Department of Social Welfare and Development (DSWD)
- (i) Chairperson, National Commission on the Role of Filipino Women (NCRFW);
- (j) Executive Director, Council for the Welfare of Children (CWC);
- (k) Director-General, Philippine National Police (PNP); and
- (l) Director, National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAWC based on their mandates, as well as develop capacity building programs for their employees to become more gender sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards VAWC initiatives.

The members of the Council shall designate their permanent representatives whose ranks are not lower than an Assistant Secretary or Director or its equivalent, to attend the meetings of the Council.

SEC. 54. Functions of the Council. – The Council shall undertake the following core functions:

- (a) Promotion of Anti-VAWC Act
 1. Public information and advocacy such as conduct of massive information dissemination campaign on the Act and the various issues and problems relative to VAWC; and
 2. Creation of mechanisms to ensure the integration of VAWC core messages in the programs and projects of all stakeholders, specifically in the education curriculum, training modules and manuals, and other VAWC-related documents.
- (b) Capacity building of stakeholders
 1. Continuous capacity building programs of various stakeholders working on VAWC.
- (c) Development of comprehensive programs for VAWC victim-survivors

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1. Development of an integrated referral system between and among stakeholders to ensure a holistic approach in handling VAWC cases and standards for the delivery of services for victim-survivors of VAWC to ensure the timely, systematic, synchronized and effective response to cases of VAWC; and
2. Assist in the filing of cases against individuals, groups, agencies, institutions or establishments that violate the provisions of the Act.

(d) Networking with other stakeholders

1. Creation of mechanisms to ensure the participation of NGOs, academe, private sector, civic and religious groups in the implementation and monitoring of VAWC cases.

(e) Monitoring of the implementation of the Act

1. Development and institutionalization of a monitoring and documentation system of VAWC cases;
2. Issuance of policies/memoranda/circulars directing all stakeholders working on VAWC to submit periodic report on their VAWC-related efforts and services including VAWC statistics to the Council;
3. Directing them to immediately respond to the problems brought to their attention and report to the Council on actions taken;
4. Promulgate rules and regulations as may be necessary for the effective implementation of the Act;
5. Monitor and oversee the strict implementation of the Act; and
6. Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of the Act.

(f) Research to include the integrated approach to eliminate VAWC, nature and root causes of VAWC, battered woman syndrome, violence within lesbian relationships, violence committed against marginalized women, rehabilitation of VAWC perpetrators and documentation of good practices as bases for policy formulation and program development.

SEC. 55. Reportorial Function. – The Council shall consolidate and submit to the President an annual report on the implementation of the Act.

SEC. 56. Meetings of the Council. – The Council shall meet on a quarterly basis. Majority of the members of the Council shall constitute a quorum to transact business.

SEC. 57. Honoraria or Emoluments. – The members of the Council or their designated permanent representatives shall receive honoraria or emoluments as may be determined by the Council in accordance with existing budget, accounting and auditing rules and regulations.

SEC. 58. Secretariat to the Council. – The Secretariat to the Council shall have the following functions:

- (a) Coordinate and monitor, under the direction of the Council, the implementation of the policies and guidelines promulgated by the Council;
- (b) Assist in establishing, maintaining and managing a central database on VAWC, wherever feasible;
- (c) Provide technical, secretariat and records keeping and other services to the Council; and
- (d) Perform such other functions as may be directed by the Council.

SEC. 59. Implementation at Sub-National and Local Levels. – The Council shall, as far as practicable, establish mechanisms to ensure the implementation of the law and these rules and regulations at the sub-national and local levels.

SEC. 60. Participation of Non-Government Organizations (NGOs) in the Implementation of the Law. – The Council shall ensure the participation of NGOs working on VAWC to effectively implement the Act in whatever forms appropriate, including but not limited to the following:

- (a) Formulate and implement policies and programs to eliminate VAWC;
- (b) Conduct capacity building activities for government personnel and share their experiences in handling VAWC cases;
- (c) Coordinate with concerned agencies, LGUs, and other NGOs in reporting alleged perpetrators, rescuing victims of VAWC and conducting investigation, if necessary;
- (d) Document VAWC cases;
- (e) Disseminate related policies and guidelines to eliminate VAWC to their networks both at the local and international levels; and
- (f) Provide services to the VAWC victim-survivors and their families.

In order to ensure the effective participation of NGOs in the implementation of the Act, NGO-GO partnerships and joint projects shall be encouraged for the purpose of promoting the objectives of this Section.

SEC. 61. Specific Duties and Responsibilities of National Government Agencies which are Members of the Council. – The following government agencies which are members of the Council, shall have, but are not limited to, the following duties and responsibilities to ensure the effective and efficient implementation of the Act to eliminate VAWC:

(a) Department of Social Welfare and Development (DSWD)

- 1. Ensure the gender-responsiveness of all its programs and projects particularly those relating to VAWC;
- 2. Ensure the nationwide implementation of the National Family Violence Prevention Program;
- 3. Continue to improve center and community-based services and develop programs responsive to the needs and concerns of victim-survivors of VAWC;
- 4. Raise gender-sensitivity among social workers and other direct-service providers, through: a) supporting the conduct of Gender Sensitivity Trainings (GSTs) in 15 regional offices for DSWD staff; and b) review and ensure that policies and mechanisms in the Department, particularly its bureaus and attached agencies are gender-sensitive and gender-responsive;
- 5. Develop and/or integrate VAWC core messages in the Code of Ethics of social workers;
- 6. Make available productivity skills and other capability building programs for VAWC victim-survivors;
- 7. Develop program, rehabilitation, counseling and other support interventions to facilitate the recovery/healing and reintegration of victim-survivors of abuse into the communities;
- 8. Conduct technical assistance and capability building programs for social welfare officers/social workers of LGUs, NGOs and other interest groups;
- 9. Create mechanisms where women and girls can report VAWC cases in a safe and confidential environment, free from fear and retaliation;
- 10. Develop programs to rehabilitate perpetrators;
- 11. Adopt/develop procedures in handling VAWC cases;
- 12. Accredite NGOs, counselors and social workers that provide programs and services to VAWC victim-survivors; and
- 13. Periodically monitor and evaluate these NGOs to ensure that they meet the standards set by the Department.

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(b) Department of Justice (DOJ)

1. Ensure the immediate prosecution of violators of the Act;
2. Designate and train special prosecutors who shall investigate and prosecute VAWC cases;
3. Establish a mechanism for free legal assistance for VAWC cases, in coordination with the DSWD, Commission on Human Rights (CHR), Integrated Bar of the Philippines (IBP), NGOs and volunteer groups;
4. Conduct training and continuing education programs specifically for prosecutors, public attorneys and those involved in VAWC cases;
5. Review and recommend policies and measures to enhance protection of VAWC victim-survivors;
6. Develop/adopt gender-responsive procedures in handling VAWC cases; institutionalize mechanisms, review and update existing policies to ensure the gender-sensitivity and gender-responsiveness of the Witness Protection and Benefit Program;
7. If necessary, revise the Rules of the National Prosecution Service to ensure that cases of VAWC under the Act shall have priority over all other pending cases;
8. Ensure appropriate and speedy disposition of VAWC cases within 45 days; and
9. Ensure that Regional Directors or Regional State Prosecutors shall make a monthly monitoring of VAWC cases to ensure the speedy disposition of cases.

(c) Department of the Interior and Local Government (DILG)

1. Issue policies and guidelines to ensure sustained implementation of the provisions of the Act and its IRR to include strengthening the Barangay Council for the Protection of Children (BCPC) and Sangguniang Committee on Women and Family (SCWF);
2. Conduct IEC programs such as, but not limited to, education and information campaign and seminars or symposia on the nature, cause, incidence and consequences of such violence particularly towards educating the LGUs including *barangay* and its employees on the social impacts of VAWC;
3. In coordination with the IAC-VAWC, formulate programs and projects to effectively implement Anti-VAWC law, including but not limited to the following: a) conduct of a massive information and education campaign on the law; b) development/issuance of supplemental guidelines/standards;
4. Ensure the continuous capacity building activities for its employees as well as the local officials and staff;
5. Monitor implementation of the Act in the LGUs to ensure full compliance; and
6. Utilize its training and education arms such as the Philippine Public Safety College (PPSC) and the Local Government Academy (LGA) for their continuing training and capacity building on Anti-VAWC and other related laws.

(d) Department of Health (DOH)

1. Strengthen/establish Women and Children Protection Units (WCPUs) in DOH Hospitals for the health care of women and children victim-survivor of violence;
2. Provide immediate personalized, gender-sensitive medical assistance to victim-survivors of violence;
3. Develop and adopt a uniformed medical protocol for all victim-survivors of violence;
4. Create a monitoring and evaluation mechanism to ensure compliance of medical practitioners to the provisions of the Act;
5. Provide relevant training to WCPU staff on women and children protection which includes appropriate medical management, forensic examination, gender-sensitive counseling and interviewing skills;
6. Equip WCPU doctors with knowledge and skills that will enable them to act as expert witnesses in court, if necessary;

7. Ensure validity and confidentiality of medical records;
8. Coordinate with other government agencies and NGOs for a more organized approach to address other non-medical needs of the victim-survivor; and
9. Conduct consultation workshops to integrate gender perspective in policy guidelines and trainings for gender and health.

(e) Department of Education (DepEd)

1. Conduct trainings for teachers on how to handle children, who are victim-survivors of VAWC in the home;
2. Conduct gender sensitivity trainings and seminars on VAWC for parents;
3. Develop gender-fair curricula in elementary and secondary levels, produce gender-responsive instructional materials and integrate in the appropriate subject areas core messages on VAWC by providing lessons that emphasize the social costs and implications of VAWC;
4. Train principals and teachers on the preparation of applications of BPOs. Teachers and principals shall assist victim-survivors in preparing applications for BPOs when requested by the victim-survivors or barangay officials;
5. Develop protocols in handling students, personnel, teachers who are suspected to be victim-survivors or perpetrators of VAWC; and
6. Establish school-based intervention programs for VAWC.

(f) Department of Labor and Employment (DOLE)

1. Ensure the implementation of Section 43 of the Act;
2. Monitor, document and report cases of VAWC specifically on children forced to work by their perpetrators;
3. Conduct public awareness programs and activities to prevent victimization of women and children; and,
4. Make available employment and livelihood programs that suit the skills of women victim-survivors of abuse to facilitate their recovery and reintegration into the communities.

(g) Civil Service Commission (CSC)

1. In collaboration with concerned agencies to ensure the conduct of gender sensitivity trainings (GSTs) and seminars/orientations on VAWC in all government agencies;
2. Revise existing policies and regulations so as to incorporate the 10-day paid leave of absence for victims pursuant to the provisions of the law;
3. Develop/adopt gender-responsive procedures in handling VAWC cases for government employees;
4. Issue policies encouraging government workers to help in the prevention and protection of victims of VAWC;
5. Lead in the development of a monitoring system to ensure compliance by all government entities to the government policies on VAWC; and
6. Integrate appropriate VAWC core messages in the Values Orientation Workshop (VOW) modules.

(h) Commission on Human Rights (CHR)

1. Ensure the integration of VAWC core messages in its programs and projects;
2. Conduct trainings on Gender Sensitivity, Women's Human Rights and VAWC for all sectors, including the police, military, members of investigating agencies;
3. Develop/adopt gender-responsive procedures in handling VAWC cases including the preparation of applications for Protection Orders;

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4. Develop, produce and disseminate information and education materials on women's human rights and gender sensitivity;
5. Provide free legal assistance to victims of VAWC and other assistance under the human rights protection services including assistance in applying for BPO and protection orders in court;
6. Integrate VAWC efforts in the Barangay Human Rights Action Center (BHRAC);
7. Investigate and recommend for prosecution violations of the Act; and
8. Monitor government compliance to international human rights treaty obligations related to the elimination of violence against women and children, particularly in the provisions of the UDHR, the CEDAW, CRC provisions and other international human rights instruments of which the Philippines is a party.

(i) National Commission on the Role of Filipino Women (NCRFW)

1. Conduct fora involving VAWC victim-survivors and women's NGOs to generate/validate data on the accessibility and effectiveness of existing VAWC services;
2. Actively advocate and participate in international and regional discussions and initiatives on VAWC and include the same in all international commitments and policy pronouncements;
3. Assist the Council in the formulation and monitoring of policies addressing the issue of VAWC in coordination with relevant government agencies;
4. Assist the Council in the conduct of information dissemination and training of frontline government agencies, NGOs and the general public;
5. Assist in the development of a standardized gender-responsive documentation system, standardized core messages and VAWC protocols. Collect/research on the profile of existing VAWC services and facilities at the national and local level in coordination with other agencies such as the DSWD, DOH, PNP, NBI, NAPOLCOM, DOJ and NSCB; and
6. Assist the Council in the formulation of prevention, counseling and rehabilitation programs for victims of VAWC.

(j) Philippine National Police (PNP)

1. Ensure the gender-responsiveness of the PNP protocols and procedures in handling VAWC cases;
2. Establish an education and training program for police officers to enable the proper handling of cases of violence against women and their children;
3. Develop and implement Police Protocol on Handling VAWC Cases under the Act and other related laws;
4. Collaborate with barangay officials, government and non-government organizations, church and civic organizations in preventing VAWC;
5. Revise its administrative disciplinary measures for police personnel who are administratively or criminally charged with committing acts under the Act;
6. Develop and implement a nationwide community-based crime prevention program that deals with the issues of domestic/family violence, abuse of women in intimate relations, child abuse and juvenile delinquency, among other interrelated issues;
7. Establish consciousness-raising and skills-enhancement training programs in the form of seminars or short courses to be used for the training of all police personnel, including barangay officials and organized communities in coordination with the DILG, regarding the implementation of the Act, as well as related laws and international human rights conventions for the protection of women and children from various forms of violence and abuse;
8. Formulate and provide regular issuances on institutional policies relevant to the improvement of law enforcement responses to cases under the Act as well as the development of the PNP as gender-sensitive law enforcement institution;

9. Coordinate with other government agencies and NGOs on the enhancement of programs and services for the protection of women and their children from various forms of violence cited under the Act; and
10. Monitor the established mechanisms for compliance and commitment of the police personnel on the implementation of the Act.

(k) National Bureau of Investigation (NBI)

1. In all its regional and provincial offices, provide one-stop shop for all the needed legal and medical services for VAWC victim-survivor;
2. Develop/adopt a protocol in handling VAWC cases;
3. Conduct regular inspection in the setting up of one-stop shop facilities to ensure that procedures and personnel are gender-sensitive and gender-responsive and monitor the activities in the respective Child Friendly Investigation Studios (CFIS) from time to time to determine its effectiveness and success in addressing cases of VAWC;
4. Conduct trainings that will raise gender-sensitivity among NBI agents/investigators and personnel;
5. Closely coordinate with all the Council member agencies for the effective detection and investigation of suspected VAWC perpetrators; and
6. Formulate plans and programs for the detection and prevention of VAWC, and for the arrest and prosecution of suspected VAWC abusers/perpetrators.

(l) Council for the Welfare of Children (CWC)

1. Integrate in its development and strategic frameworks issues and concerns affecting abused children and ensure the adoption of such frameworks by the LGUs and other stakeholders;
2. Vigorously advocate against VAWC;
3. Adopt policies and measures that will protect and promote the rights and welfare of children victims of VAWC and coordinate and monitor their implementation; and
4. Formulate plans, policies and program interventions to address VAWC.

RULE X

CAPACITY BUILDING FOR SERVICE PROVIDERS

SECTION 62. *Training of Government Personnel Involved in Responding to VAWC.* – All agencies involved in responding to violence against women and their children cases shall be required to undergo education and training to acquaint them with the:

- (a) Nature, extent and causes of VAWC;
- (b) Legal rights of, and remedies available to, victim-survivors of VAWC;
- (c) Services and facilities available to victim-survivors;
- (d) Legal duties of police officers in the arrest of perpetrators and protection and assistance to victim-survivors; and
- (e) Techniques for handling incidents of VAWC that minimize the likelihood of injury to the officer and promote the safety of the victim or survivor.

The PNP, in coordination with LGUs, shall establish an education and training program for police officers and barangay officials to enable them to properly handle cases of violence against women and their children.

**RULE XI
CONFIDENTIALITY**

SECTION 63. Confidentiality. – During the investigation, prosecution and trial of an offense under the Act, law enforcement officials, prosecution, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the victim-survivor of violence. Law enforcement officers and prosecutors shall conduct closed-door investigations and shall not allow the media to have access to any information regarding the victim. The adult victim, however, may choose to go public or speak with the media, preferably with the assistance of her counsel.

The barangay officials, law enforcers, prosecutors and court personnel shall not disclose the names and personal circumstances of the victims or complainants or any other information tending to establish their identities to the media or the public or compromise her identity.

It shall be unlawful for any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media or information technology to cause publicity of the name or identity of the victim or complainant without her consent. Identities of children shall not in any way be disclosed to the public without the conformity of the DSWD officer of the city or province.

Any person who violates this provision shall suffer the penalty of one year imprisonment and a fine of not more than Five Hundred Thousand Pesos (P500,000).

**RULE XII
FUNDING**

SECTION 64. Inclusion in Agency Appropriations. – The heads of departments and agencies concerned shall immediately include in their annual appropriations the funding necessary to implement programs and services required by the Act and these regulations.

In the interim, the funding necessary to carry out their mandate under the Act may be charged against their Gender and Development (GAD) budget. All concerned departments including their attached agencies, offices, state colleges and universities, government owned and/or controlled corporations and LGUs shall prioritize the use of their GAD Budget for services and programs for VAWC victim-survivors as well as in its prevention. The 20 percent Development Fund of LGUs shall also be tapped for the same purpose.

**RULE XIII
FINAL PROVISIONS**

SECTION 65. Separability Clause. – If for any reason, any part or provisions of this Implementing Rules and Regulations shall be held unconstitutional or invalid, other sections or provision hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 66. Repealing Clause. – All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the Act and these Rules and Regulations are hereby repealed or modified accordingly.

SEC. 67. Effectivity. – These Rules and Regulations shall take effect 15 days after its complete publication in two newspapers of general circulation.

REPUBLIC ACT No. 9344
AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM,
CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER
THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES
Approved on April 28, 2006

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

TITLE I

GOVERNING PRINCIPLES

CHAPTER 1

TITLE, POLICY AND DEFINITION OF TERMS

SECTION 1. *Short Title and Scope.* – This Act shall be known as the “*Juvenile Justice and Welfare Act of 2006.*” It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

SEC. 2. *Declaration of State Policy.* – The following State policies shall be observed at all times:

- (a) The State recognizes the vital role of children and youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.
- (b) The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency.
- (c) The State likewise recognizes the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty and exploitation, and other conditions prejudicial to their development.
- (d) Pursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child alleged as, accused of, adjudged, or recognized as, having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, taking into account the child’s age and desirability of promoting his/her reintegration. Whenever appropriate and desirable, the State shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. It shall ensure that children are dealt with in a manner appropriate to their well-being by providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.
- (e) The administration of the juvenile justice and welfare system shall take into consideration the cultural and religious perspectives of the Filipino people, particularly the indigenous peoples and the Muslims, consistent with the protection of the rights of children belonging to these communities.
- (f) The State shall apply the principles of restorative justice in all its laws, policies and programs applicable to children in conflict with the law.

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SEC. 3. *Liberal Construction of this Act.* – In case of doubt, the interpretation of any of the provisions of this Act, including its Implementing Rules and Regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law.

SEC. 4. *Definition of Terms.* – The following terms as used in this Act shall be defined as follows:

- (a) *Bail* refers to the security given for the release of the person in custody of the law, furnished by him/her or a bondsman, to guarantee his/her appearance before any court. Bail may be given in the form of corporate security, property bond, cash deposit, or recognizance.
- (b) *Best Interest of the Child* refers to the totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.
- (c) *Child* refers to a person under the age of 18 years.
- (d) *Child at Risk* refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:
 - (1) Being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
 - (2) Being exploited including sexually or economically;
 - (3) Being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
 - (4) Coming from a dysfunctional or broken family or without a parent or guardian;
 - (5) Being out of school;
 - (6) Being a streetchild;
 - (7) Being a member of a gang;
 - (8) Living in a community with a high level of criminality or drug abuse; and
 - (9) Living in situations of armed conflict.
- (e) *Child in Conflict with the Law* refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.
- (f) *Community-based Programs* refers to the programs provided in a community setting developed for purposes of intervention and diversion, as well as rehabilitation of the child in conflict with the law, for reintegration into his/her family and/or community.
- (g) *Court* refers to a family court or, in places where there are no family courts, any Regional Trial Court.
- (h) *Deprivation of Liberty* refers to any form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will by order of any judicial or administrative authority.
- (i) *Diversion* refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.
- (j) *Diversion Program* refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.
- (k) *Initial Contact with the Child* refers to the apprehension or taking into custody of a child in conflict with the law by law enforcement officers or private citizens. It includes the time when the child alleged to be in conflict with the law receives a *subpoena* under Section 3(b) of Rule 112 of the Revised Rules of Criminal

Procedure or summons under Section 6(a) or Section 9(b) of the same Rule in cases that do not require preliminary investigation or where there is no necessity to place the child alleged to be in conflict with the law under immediate custody.

- (l) *Intervention* refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psychosocial well-being.
- (m) *Juvenile Justice and Welfare System* refers to a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, reintegration and aftercare to ensure their normal growth and development.
- (n) *Law Enforcement Officer* refers to the person in authority or his/her agent as defined in Article 152 of the Revised Penal Code, including a *Barangay Tanod*.
- (o) *Offense* refers to any act or omission whether punishable under special laws or the Revised Penal Code, as amended.
- (p) *Recognizance* refers to an undertaking in lieu of a bond assumed by a parent or custodian who shall be responsible for the appearance in court of the child in conflict with the law, when required.
- (q) *Restorative Justice* refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.
- (r) *Status Offenses* refers to offenses which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts. These shall include curfew violations, truancy, parental disobedience and the like.
- (s) *Youth Detention Home* refers to a 24-hour child-caring institution managed by accredited local government units (LGUs) and licensed and/or accredited non-government organizations (NGOs) providing short-term residential care for children in conflict with the law who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.
- (t) *Youth Rehabilitation Center* refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licensed and/or accredited NGOs monitored by the DSWD, which provides care, treatment and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. Physical mobility of residents of said centers may be restricted pending court disposition of the charges against them.
- (u) *Victimless Crimes* refers to offenses where there is no private offended party.

CHAPTER 2

PRINCIPLES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE

SECTION 5. Rights of the Child in Conflict with the Law. – Every child in conflict with the law shall have the following rights, including but not limited to:

- (a) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- (b) The right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;

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- (c) The right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;
- (d) The right to be treated with humanity and respect for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age. In particular, a child deprived of liberty shall be separated from adult offenders at all times. No child shall be detained together with adult offenders. He/She shall be conveyed separately to or from court. He/She shall await hearing of his/her own case in a separate holding area. A child in conflict with the law shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;
- (e) The right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action;
- (f) The right to bail and recognizance, in appropriate cases;
- (g) The right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
- (h) The right to have his/her privacy respected fully at all stages of the proceedings;
- (i) The right to diversion if he/she is qualified and voluntarily avails of the same;
- (j) The right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;
- (k) The right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;
- (l) In general, the right to automatic suspension of sentence;
- (m) The right to probation as an alternative to imprisonment, if qualified under the Probation Law;
- (n) The right to be free from liability for perjury, concealment or misrepresentation; and
- (o) Other rights as provided for under existing laws, rules and regulations.

The State further adopts the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or *Beijing Rules*, United Nations Guidelines for the Prevention of Juvenile Delinquency or the *Riyadh Guidelines*, and the United Nations Rules for the Protection of Juveniles Deprived of Liberty.

SEC. 6. Minimum Age of Criminal Responsibility. – A child 15 years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above 15 years but below 18 years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

SEC. 7. Determination of Age. – The child in conflict with the law shall enjoy the presumption of minority. He/she shall enjoy all the rights of a child in conflict with the law until he/she is proven to be 18 years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within 24 hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law.

TITLE II

STRUCTURES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE

SECTION. 8. *Juvenile Justice and Welfare Council* – A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

- (a) Council for the Welfare of Children (CWC);
- (b) Department of Education (DepEd);
- (c) Department of the Interior and Local Government (DILG);
- (d) Public Attorney’s Office (PAO);
- (e) Bureau of Corrections (BUCOR);
- (f) Parole and Probation Administration (PPA);
- (g) National Bureau of Investigation (NBI);
- (h) Philippine National Police (PNP);
- (i) Bureau of Jail Management and Penology (BJMP);
- (j) Commission on Human Rights (CHR);
- (k) Technical Education and Skills Development Authority (TESDA);
- (l) National Youth Commission (NYC); and
- (m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

- (a) Department of Justice (DOJ);
- (b) Department of Social Welfare and Development (DSWD);
- (c) Council for the Welfare of Children (CWC);
- (d) Department of Education (DepEd);
- (e) Department of the Interior and Local Government (DILG);
- (f) Commission on Human Rights (CHR);
- (g) National Youth Commission (NYC); and

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- (h) Two representatives from non-government organizations, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall convene within 15 days from the effectivity of this Act. The Secretary of Justice and the Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

SEC. 9. Duties and Functions of the JJWC. – The JJWC shall have the following duties and functions:

- (a) To oversee the implementation of this Act;
- (b) To advise the President on all matters and policies relating to juvenile justice and welfare;
- (c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;
- (d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;
- (e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;
- (f) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;
- (g) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as, but not limited to:
 - (1) The performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;
 - (2) The periodic trends, problems and causes of juvenile delinquency and crimes; and
 - (3) The particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

- (h) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;
- (i) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;
- (j) To submit an annual report to the President on the implementation of this Act; and
- (k) To perform such other functions as may be necessary to implement the provisions of this Act.

SEC. 10. Policies and Procedures on Juvenile Justice and Welfare. – All government agencies enumerated in Section 8 shall, with the assistance of the JJWC and within one year from the effectivity of this Act, draft policies and

procedures consistent with the standards set in the law. These policies and procedures shall be modified accordingly in consultation with the JJWC upon the completion of the national juvenile intervention program as provided under Section 9(d).

SEC. 11. *Child Rights Center.* – The existing Child Rights Center (CRC) of the Commission on Human Rights shall ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The CHR shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society.

TITLE III

PREVENTION OF JUVENILE DELINQUENCY

CHAPTER 1

THE ROLE OF THE DIFFERENT SECTORS

SECTION 12. *The Family.* – The family shall be responsible for the primary nurturing and rearing of children which is critical in delinquency prevention. As far as practicable and in accordance with the procedures of this Act, a child in conflict with the law shall be maintained in his/her family.

SEC. 13. *The Educational System.* – Educational institutions shall work together with families, community organizations and agencies in the prevention of juvenile delinquency and in the rehabilitation and reintegration of child in conflict with the law. Schools shall provide adequate, necessary and individualized educational schemes for children manifesting difficult behavior and children in conflict with the law. In cases where children in conflict with the law are taken into custody or detained in rehabilitation centers, they should be provided the opportunity to continue learning under an alternative learning system with basic literacy program or non-formal education accreditation equivalency system.

SEC. 14. *The Role of the Mass Media.* – The mass media shall play an active role in the promotion of child rights, and delinquency prevention by relaying consistent messages through a balanced approach. Media practitioners shall, therefore, have the duty to maintain the highest critical and professional standards in reporting and covering cases of children in conflict with the law. In all publicity concerning children, the best interest of the child should be the primordial and paramount concern. Any undue, inappropriate and sensationalized publicity of any case involving a child in conflict with the law is hereby declared a violation of the child's rights.

SEC. 15. *Establishment and Strengthening of Local Councils for the Protection of Children.* – Local Councils for the Protection of Children (LCPC) shall be established in all levels of local government, and where they have already been established, they shall be strengthened within one year from the effectivity of this Act. Membership in the LCPC shall be chosen from among the responsible members of the community, including a representative from the youth sector, as well as representatives from government and private agencies concerned with the welfare of children.

The local council shall serve as the primary agency to coordinate with and assist the LGU concerned for the adoption of a comprehensive plan on delinquency prevention, and to oversee its proper implementation.

One percent of the internal revenue allotment of *barangays*, municipalities and cities shall be allocated for the strengthening and implementation of the programs of the LCPC: *Provided*, That the disbursement of the fund shall be made by the LGU concerned.

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SEC. 16. Appointment of Local Social Welfare and Development Officer. – All LGUs shall appoint a duly licensed social worker as its local social welfare and development officer tasked to assist children in conflict with the law.

SEC. 17. The Sangguniang Kabataan. – The *Sangguniang Kabataan (SK)* shall coordinate with the LCPC in the formulation and implementation of juvenile intervention and diversion programs in the community.

CHAPTER 2

COMPREHENSIVE JUVENILE INTERVENTION PROGRAM

SECTION 18. Development of a Comprehensive Juvenile Intervention Program. – A comprehensive juvenile intervention program covering at least a three-year period shall be instituted in LGUs from the *barangay* to the provincial level.

The LGUs shall set aside an amount necessary to implement their respective juvenile intervention programs in their annual budget.

The LGUs, in coordination with the LCPC, shall call on all sectors concerned, particularly the child-focused institutions, NGOs, people's organizations, educational institutions and government agencies involved in delinquency prevention to participate in the planning process and implementation of juvenile intervention programs. Such programs shall be implemented consistent with the national program formulated and designed by the JJWC.

The implementation of the comprehensive juvenile intervention program shall be reviewed and assessed annually by the LGUs in coordination with the LCPC. Results of the assessment shall be submitted by the provincial and city governments to the JJWC not later than March 30 of every year.

SEC. 19. Community-based Programs on Juvenile Justice and Welfare. – Community-based programs on juvenile justice and welfare shall be instituted by the LGUs through the LCPC, school, youth organizations and other concerned agencies. The LGUs shall provide community-based services which respond to the special needs, problems, interests and concerns of children and which offer appropriate counseling and guidance to them and their families. These programs shall consist of three levels:

- (a) Primary intervention includes general measures to promote social justice and equal opportunity, which tackle perceived root causes of offending;
- (b) Secondary intervention includes measures to assist children at risk; and
- (c) Tertiary intervention includes measures to avoid unnecessary contact with the formal justice system and other measures to prevent re-offending.

TITLE IV

TREATMENT OF CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY

SECTION 20. Children Below the Age of Criminal Responsibility. – If it has been determined that the child taken into custody is 15 years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered non-governmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or, when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment

shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code."

TITLE V
JUVENILE JUSTICE AND WELFARE SYSTEM

CHAPTER 1
INITIAL CONTACT WITH THE CHILD

SECTION 21. Procedure for Taking the Child into Custody. – From the moment a child is taken into custody, the law enforcement officer shall:

- (a) Explain to the child in simple language and in a dialect that he/she can understand why he/she is being placed under custody and the offense that he/she allegedly committed;
- (b) Inform the child of the reason for such custody and advise the child of his/her constitutional rights in a language or dialect understood by him/her;
- (c) Properly identify himself/herself and present proper identification to the child;
- (d) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child in conflict with the law;
- (e) Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;
- (f) Refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension;
- (g) Avoid violence or unnecessary force;
- (h) Determine the age of the child pursuant to Section 7 of this Act;
- (i) Immediately but not later than eight hours after apprehension, turn over custody of the child to the Social Welfare and Development Office or other accredited non-government organizations, and notify the child's parents/guardians and Public Attorney's Office of the child's apprehension. The social welfare and development officer shall explain to the child and the child's parents/guardians the consequences of child's act with a view towards counseling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate;
- (j) Take the child immediately to the proper medical and health officer for a thorough physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever the medical treatment is required, steps shall be immediately undertaken to provide the same;
- (k) Ensure that should detention of the child in conflict with the law be necessary, the child shall be secured in quarters separate from that of the opposite sex and adult offenders;
- (l) Record the following in the initial investigation:
 - (1) Whether handcuffs or other instruments of restraint were used, and if so, the reason for such;
 - (2) That the parents or guardian of a child, the DSWD, and the PAO have been duly informed of the apprehension and the details thereof; and
 - (3) The exhaustion of measures to determine the age of a child and the precise details of the physical and medical examination or the failure to submit a child to such examination; and

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- (m) Ensure that all statements signed by the child during investigation shall be witnessed by the child's parents or guardian, social worker, or legal counsel in attendance who shall affix his/her signature to the said statement.

A child in conflict with the law shall only be searched by a law enforcement officer of the same gender and shall not be locked up in a detention cell.

SEC. 22. Duties During Initial Investigation. – The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

The taking of the statement of the child shall be conducted in the presence of the following: (1) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (2) the child's parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare and development officer. In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

After the initial investigation, the local social worker conducting the same may do either of the following:

- (a) Proceed in accordance with Section 20 if the child is 15 years or below or above 15 but below 18 years old, who acted without discernment; and
- (b) If the child is above 15 years old but below 18 and who acted with discernment, proceed to diversion under the following chapter.

CHAPTER 2 DIVERSION

SECTION 23. System of Diversion. – Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the conditions herein provided:

- (a) Where the imposable penalty for the crime committed is not more than six years imprisonment, the law enforcement officer or *Punong Barangay* with the assistance of the local social welfare development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.
- (b) In victimless crimes where the imposable penalty is not more than six years imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC;
- (c) Where the imposable penalty for the crime committed exceeds six years imprisonment, diversion measures may be resorted to only by the court.

SEC. 24. Stages Where Diversion May Be Conducted. – Diversion may be conducted at the *Katarungang Pambarangay*, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level.

SEC. 25. Conferencing, Mediation and Conciliation. – A child in conflict with law may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system. A contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings.

SEC. 26. Contract of Diversion. – If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed when appropriate and desirable as determined under Section 30. Such admission shall not be used against the child in any subsequent judicial, quasi-judicial or

administrative proceedings. The diversion program shall be effective and binding if accepted by the parties concerned. The acceptance shall be in writing and signed by the parties concerned and the appropriate authorities. The local social welfare and development officer shall supervise the implementation of the diversion program. The diversion proceedings shall be completed within 45 days. The period of prescription of the offense shall be suspended until the completion of the diversion proceedings but not to exceed 45 days.

The child shall present himself/herself to the competent authorities that imposed the diversion program at least once a month for reporting and evaluation of the effectiveness of the program.

Failure to comply with the terms and conditions of the contract of diversion, as certified by the local social welfare and development officer, shall give the offended party the option to institute the appropriate legal action.

The period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding a period of two years.

SEC. 27. Duty of the Punong Barangay When There is No Diversion. – If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the *Punong Barangay* handling the case shall, within three days from determination of the absence of jurisdiction over the case or termination of the diversion proceedings, as the case may be, forward the records of the case of the child to the law enforcement officer, prosecutor or the appropriate court, as the case may be. Upon the issuance of the corresponding document, certifying to the fact that no agreement has been reached by the parties, the case shall be filed according to the regular process.

SEC. 28. Duty of the Law Enforcement Officer When There is No Diversion. – If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Women and Children Protection Desk of the PNP, or other law enforcement officer handling the case shall, within three days from determination of the absence of jurisdiction over the case or termination of diversion proceedings, forward the records of the case of the child under custody, to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation to determine whether or not the child should remain under custody and correspondingly charged in court. The document transmitting said records shall display the word “CHILD” in bold letters.

SEC. 29. Factors in Determining Diversion Program. – In determining whether diversion is appropriate and desirable, the following factors shall be taken into consideration:

- (a) The nature and circumstances of the offense charged;
- (b) The frequency and the severity of the act;
- (c) The circumstances of the child (*e.g.*, age, maturity, intelligence, etc.);
- (d) The influence of the family and environment on the growth of the child;
- (e) The reparation of injury to the victim;
- (f) The weight of the evidence against the child;
- (g) The safety of the community; and
- (h) The best interest of the child.

SEC. 30. Formulation of the Diversion Program. – In formulating a diversion program, the individual characteristics and the peculiar circumstances of the child in conflict with the law shall be used to formulate an individualized treatment.

The following factors shall be considered in formulating a diversion program for the child:

- (a) The child’s feelings of remorse for the offense he/she committed;

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- (b) The parents' or legal guardians' ability to guide and supervise the child;
- (c) The victim's view about the propriety of the measures to be imposed; and
- (d) The availability of community-based programs for rehabilitation and reintegration of the child.

SEC. 31. *Kinds of Diversion Program.* – The diversion program shall include adequate sociocultural and psychological responses and services for the child. At the different stages where diversion may be resorted to, the following diversion programs may be agreed upon, such as, but not limited to:

- (a) At the level of the *Punong Barangay*:
 - (1) Restitution of property;
 - (2) Reparation of the damage caused;
 - (3) Indemnification for consequential damages;
 - (4) Written or oral apology;
 - (5) Care, guidance and supervision orders;
 - (6) Counseling for the child in conflict with the law and the child's family;
 - (7) Attendance in trainings, seminars and lectures on:
 - (i) Anger management skills;
 - (ii) Problem solving and/or conflict resolution skills;
 - (iii) Values formation; and
 - (iv) Other skills which will aid the child in dealing with situations which can lead to repetition of the offense;
 - (8) Participation in available community-based programs, including community service; or
 - (9) Participation in education, vocation and life skills programs.
- (b) At the level of the law enforcement officer and the prosecutor:
 - (1) Diversion programs specified under paragraphs (a)(1) to (a)(9) herein; and
 - (2) Confiscation and forfeiture of the proceeds or instruments of the crime;
- (c) At the level of the appropriate court:
 - (1) Diversion programs specified under paragraphs (a) and (b) above;
 - (2) Written or oral reprimand or citation;
 - (3) Fine;
 - (4) Payment of the cost of the proceedings; or
 - (5) Institutional care and custody.

CHAPTER 3 PROSECUTION

SECTION 32. *Duty of the Prosecutor's Office.* – There shall be a specially trained prosecutor to conduct inquest, preliminary investigation and prosecution of cases involving a child in conflict with the law. If there is an allegation of torture or ill-treatment of a child in conflict with the law during arrest or detention, it shall be the duty of the prosecutor to investigate the same.

SEC. 33. Preliminary Investigation and Filing of Information. – The prosecutor shall conduct a preliminary investigation in the following instances:

- (a) When the child in conflict with the law does not qualify for diversion;
- (b) When the child, his/her parents or guardian does not agree to diversion as specified in Sections 27 and 28; and
- (c) When considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law.

Upon serving the subpoena and the affidavit of complaint, the prosecutor shall notify the Public Attorney’s Office of such service, as well as the personal information, and place of detention of the child in conflict with the law.

Upon determination of probable cause by the prosecutor, the information against the child shall be filed before the Family Court within 45 days from the start of the preliminary investigation.

**CHAPTER 4
COURT PROCEEDINGS**

SECTION 34. Bail. – For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered.

SEC. 35. Release on Recognizance. – Where a child is detained, the court shall order:

- (a) The release of the minor on recognizance to his/ her parents and other suitable persons;
- (b) The release of the child in conflict with the law on bail; or
- (c) The transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case.

SEC. 36. Detention of the Child Pending Trial. – Children detained pending trial may be released on bail or recognizance as provided for under Sections 34 and 35 under this Act. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a child will always be detained in youth detention homes established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child’s appearance in court whenever required.

SEC. 37. Diversion Measures. – Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than 12 years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate.

SEC. 38. Automatic Suspension of Sentence. – Once the child who is under 18 years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of

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conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however,* That suspension of sentence shall still be applied even if the juvenile is already 18 years of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

SEC. 39. Discharge of the Child in Conflict with the Law. – Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law.

SEC. 40. Return of the Child in Conflict with the Law to Court. – If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached 18 years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of 21 years.

SEC. 41. Credit in Service of Sentence. – The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

SEC. 42. Probation as an Alternative to Imprisonment. – The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the *Probation Law of 1976*, is hereby amended accordingly.

CHAPTER 5

CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

SECTION 43. Confidentiality of Records and Proceedings. – All records and proceedings involving children in conflict with the law from initial contact until final disposition of the case shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child in conflict with the law may have his/her sentence suspended or if he/she may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The component authorities shall undertake all measures to protect this confidentiality of proceedings, including non-disclosure of records to the media, maintaining a separate police blotter for cases involving children in conflict with the law and adopting a system of coding to conceal material information which will lead to the child's identity. Records of a child in conflict with the law shall not be used in subsequent proceedings for cases involving the same offender as an adult, except when beneficial for the offender and upon his/her written consent.

A person who has been in conflict with the law as a child shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him/her for any purpose.

TITLE VI
REHABILITATION AND REINTEGRATION

SECTION 44. *Objective of Rehabilitation and Reintegration.* – The objective of rehabilitation and reintegration of children in conflict with the law is to provide them with interventions, approaches and strategies that will enable them to improve their social functioning with the end goal of reintegration to their families and as productive members of their communities.

SEC. 45. *Court Order Required.* – No child shall be received in any rehabilitation or training facility without a valid order issued by the court after a hearing for the purpose. The details of this order shall be immediately entered in a register exclusively for children in conflict with the law. No child shall be admitted in any facility where there is no such register.

SEC. 46. *Separate Facilities from Adults.* – In all rehabilitation or training facilities, it shall be mandatory that children shall be separated from adults unless they are members of the same family. Under no other circumstance shall a child in conflict with the law be placed in the same confinement as adults.

The rehabilitation, training or confinement area of children in conflict with the law shall provide a home environment where children in conflict with the law can be provided with quality counseling and treatment.

SEC. 47. *Female Children.* – Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

SEC. 48. *Gender-Sensitivity Training.* – No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

SEC. 49. *Establishment of Youth Detention Homes.* – The LGUs shall set aside an amount to build youth detention homes as mandated by the Family Courts Act. Youth detention homes may also be established by private and NGOs licensed and accredited by the DSWD, in consultation with the JJWC.

SEC. 50. *Care and Maintenance of the Child in Conflict with the Law.* – The expenses for the care and maintenance of a child in conflict with the law under institutional care shall be borne by his/her parents or those persons liable to support him/her: *Provided*, That in case his/her parents or those persons liable to support him/her cannot pay all or part of said expenses, the municipality where the offense was committed shall pay one-third of said expenses or part thereof; the province to which the municipality belongs shall pay one-third and the remaining one-third shall be borne by the national government. Chartered cities shall pay two-thirds of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said obligations: *Provided, further*, That in the event that the child in conflict with the law is not a resident of the municipality/city where the offense was committed, the court, upon its determination, may require the city/municipality where the child in conflict with the law resides to shoulder the cost.

All city and provincial governments must exert effort for the immediate establishment of local detention homes for children in conflict with the law.

SEC. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities.* – A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

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SEC. 52. *Rehabilitation of Children in Conflict with the Law.* – Children in conflict with the law, whose sentences are suspended may, upon order of the court, undergo any or a combination of disposition measures best suited to the rehabilitation and welfare of the child as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

If the community-based rehabilitation is availed of by a child in conflict with the law, he/she shall be released to parents, guardians, relatives or any other responsible person in the community. Under the supervision and guidance of the local social welfare and development officer, and in coordination with his/her parents/guardian, the child in conflict with the law shall participate in community-based programs, which shall include, but not limited to:

- (1) Competency and life skills development;
- (2) Socio-cultural and recreational activities;
- (3) Community volunteer projects;
- (4) Leadership training;
- (5) Social services;
- (6) Homelife services;
- (7) Health services;
- (8) Spiritual enrichment; and
- (9) Community and family welfare services.

In accordance therewith, the family of the child in conflict with the law shall endeavor to actively participate in the community-based rehabilitation.

Based on the progress of the youth in the community, a final report will be forwarded by the local social welfare and development officer to the court for final disposition of the case.

If the community-based programs are provided as diversion measures under Chapter II, Title V, the programs enumerated above shall be made available to the child in conflict with the law.

SEC. 53. *Youth Rehabilitation Center.* – The youth rehabilitation center shall provide 24-hour group care, treatment and rehabilitation services under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them in their families and communities as socially functioning individuals. A quarterly report shall be submitted by the center to the proper court on the progress of the children in conflict with the law. Based on the progress of the youth in the center, a final report will be forwarded to the court for final disposition of the case. The DSWD shall establish youth rehabilitation centers in each region of the country.

SEC. 54. *Objectives of Community-Based Programs.* – The objectives of community-based programs are as follows:

- (a) Prevent disruption in the education or means of livelihood of the child in conflict with the law in case he/she is studying, working or attending vocational learning institutions;
- (b) Prevent separation of the child in conflict with the law from his/her parents/guardians to maintain the support system fostered by their relationship and to create greater awareness of their mutual and reciprocal responsibilities;
- (c) Facilitate the rehabilitation and mainstreaming of the child in conflict with the law and encourage community support and involvement; and
- (d) Minimize the stigma that attaches to the child in conflict with the law by preventing jail detention.

SEC. 55. *Criteria of Community-Based Programs.* – Every LGU shall establish community-based programs that will focus on the rehabilitation and reintegration of the child. All programs shall meet the criteria to be established by

the JJWC which shall take into account the purpose of the program, the need for the consent of the child and his/her parents or legal guardians, and the participation of the child-centered agencies whether public or private.

SEC. 56. After-Care Support Services for Children in Conflict with the Law. – Children in conflict with the law whose cases have been dismissed by the proper court because of good behavior as per recommendation of the DSWD social worker and/or any accredited NGO youth rehabilitation center shall be provided aftercare services by the local social welfare and development officer for a period of at least six months. The service includes counseling and other community-based services designed to facilitate social reintegration, prevent re-offending and make the children productive members of the community.

**TITLE VII
GENERAL PROVISIONS**

**CHAPTER 1
EXEMPTING PROVISIONS**

SECTION 57. Status Offenses. – Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.

SEC. 58. Offenses Not Applicable to Children. – Persons below 18 years of age shall be exempt from prosecution for the crime of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention of the Rights of the Child: *Provided*, That said persons shall undergo appropriate counseling and treatment program.

SEC. 59. Exemption from the Application of Death Penalty. – The provisions of the Revised Penal Code, as amended, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law.

**CHAPTER 2
PROHIBITED ACTS**

SECTION 60. Prohibition Against Labeling and Shaming. – In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin.

SEC. 61. Other Prohibited Acts. – The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

- (a) Employment of threats of whatever kind and nature;
- (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
- (c) Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and
- (d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

CHAPTER 3
PENAL PROVISION

SECTION 62. *Violation of the Provisions of this Act or Rules or Regulations in General.* – Any person who violates any provision of this Act or any rule or regulation promulgated in accordance thereof shall, upon conviction for each act or omission, be punished by a fine of not less than Twenty Thousand Pesos (P20,000) but not more than Fifty Thousand Pesos (P50,000) or suffer imprisonment of not less than eight years but not more than 10 years, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws. If the offender is a public officer or employee, he/she shall, in addition to such fine and/or imprisonment, be held administratively liable and shall suffer the penalty of perpetual absolute disqualification.

CHAPTER 4
APPROPRIATION PROVISION

SECTION 63. *Appropriations.* – The amount necessary to carry out the initial implementation of this Act shall be charged to the Office of the President. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the succeeding General Appropriations Act. An initial amount of Fifty Million Pesos (P50 Million) for the purpose of setting up the JJWC shall be taken from the proceeds of the Philippine Charity Sweepstakes Office.

TITLE VIII
TRANSITORY PROVISIONS

SECTION 64. *Children in Conflict with the Law 15 Years Old and Below.* – Upon effectivity of this Act, cases of children 15 years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

SEC. 65. *Children Detained Pending Trial.* – If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention. If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

SEC. 66. *Inventory of “Locked-up” and Detained Children in Conflict with the Law.* – The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within 90 days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

SEC. 67. *Children Who Reach the Age of 18 Years Pending Diversion and Court Proceedings.* – If a child reaches the age of 18 years pending diversion and court proceedings, the appropriate diversion authority in consultation with local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict with the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

SEC. 68. *Children Who Have Been Convicted and are Serving Sentence.* – Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of 18 years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

TITLE IX
FINAL PROVISIONS

SECTION 69. *Rule Making Power.* – The JJWC shall issue the IRRs for the implementation of the provisions of this Act within 90 days from the effectivity thereof.

SEC. 70. *Separability Clause.* – If, for any reason, any section or provision of this Act is declared unconstitutional or invalid by the Supreme Court, the other sections or provisions hereof not affected by such declaration shall remain in full force and effect.

SEC. 71. *Repealing Clause.* – All existing laws, orders, decrees, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 72. *Effectivity.* – This Act shall take effect after 15 days from its publication in at least two national newspapers of general circulation.

REPUBLIC ACT No. 9523

AN ACT REQUIRING CERTIFICATION OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD) TO DECLARE A “CHILD LEGALLY AVAILABLE FOR ADOPTION” AS A PREREQUISITE FOR ADOPTION PROCEEDINGS, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT No. 8552, OTHERWISE KNOWN AS THE DOMESTIC ADOPTION ACT OF 1998, REPUBLIC ACT No. 8043, OTHERWISE KNOWN AS THE INTER-COUNTRY ADOPTION ACT OF 1995, PRESIDENTIAL DECREE No. 603, OTHERWISE KNOWN AS THE CHILD AND YOUTH WELFARE CODE, AND FOR OTHER PURPOSES Approved on March 12, 2009

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

SECTION 1. Declaration of Policy. – It is hereby declared the policy of the State that alternative protection and assistance shall be afforded to every child who is abandoned, surrendered, or neglected. In this regard, the State shall extend such assistance in the most expeditious manner in the interest of full emotional and social development of the abandoned, surrendered, or neglected child.

It is hereby recognized that administrative processes under the jurisdiction of the Department of Social Welfare and Development for the declaration of a child legally available for adoption of abandoned, surrendered, or neglected children are the most expeditious proceedings for the best interest and welfare of the child.

SEC. 2. Definition of Terms. – As used in this Act, the following terms shall mean:

- (1) *Department of Social Welfare and Development (DSWD)* is the agency charged to implement the provisions of this Act and shall have the sole authority to issue the certification declaring a child legally available for adoption.
- (2) *Child* refers to a person below 18 years of age or a person over 18 years of age but is unable to fully take care of him/herself or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of physical or mental disability or condition.
- (3) *Abandoned Child* refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three continuous months, which includes a founding.
- (4) *Neglected Child* refers to a child whose basic needs have been deliberately unattended or inadequately attended within a period of three continuous months. Neglect may occur in two ways:
 - (a) There is physical neglect when the child is malnourished, ill-clad, and without proper shelter. A child is unattended when left by himself/herself without proper provisions and/or without proper supervision.
 - (b) There is emotional neglect when the child is maltreated, raped, seduced, exploited, overworked, or made to work under conditions not conducive to good health; or is made to beg in the streets or public places; or when children are in moral danger, or exposed to gambling, prostitution, and other vices.
- (5) *Child Legally Available for Adoption* refers to a child in whose favor a certification was issued by the DSWD that he/she is legally available for adoption after the fact of abandonment or neglect has been proven through the submission of pertinent documents, or one who was voluntarily committed by his/her parent(s) or legal guardian.
- (6) *Voluntarily Committed Child* is one whose parent(s) or legal guardian knowingly and willingly relinquished parental authority to the DSWD or any duly accredited child-placement or child-caring agency or institution.
- (7) *Child-caring agency or institution* refers to a private non-profit or government agency duly accredited by the DSWD that provides 24 hour residential care services for abandoned, neglected, or voluntarily committed children.

- (8) *Child-placing agency or institution* refers to a private non-profit institution or government agency duly accredited by the DWSD that receives and processes applicants to become foster or adoptive parents and facilitate placement of children eligible for foster care or adoption.
- (9) *Petitioner* refers to the head or executive director of a licensed or accredited child-caring or child-placing agency or institution managed by the government, local government unit, non-governmental organization, or provincial, city, or municipal Social Welfare Development Officer who has actual custody of the minor and who files a certification to declare such child legally available for adoption, or, if the child is under the custody of any other individual, the agency or institution does so with the consent of the child's custodian.
- (10) *Secretary* refers to the Secretary of the DSWD or his duly authorized representative.
- (11) *Conspicuous Place* shall refer to a place frequented by the public, whereby the notice of the petition shall be posted for information of any interested person.
- (12) *Social Case Study Report (SCSR)* shall refer to a written report of the result of an assessment conducted by a licensed social worker as to the sociocultural economic condition, psychosocial background, current functioning and facts of abandonment or neglect of the child. The report shall also state the efforts of social worker to locate the child's biological parents/relatives.

SEC. 3. Petition. – The petition shall be in the form of an affidavit, subscribed and sworn to before any person authorized by law to administer oaths. It shall contain facts necessary to establish the merits of the petition and shall state the circumstances surrounding the abandonment or neglect of the child.

The petition shall be supported by the following documents:

- (1) Social Case Study Report made by the DSWD, local government unit, licensed or accredited child-caring or child-placing agency or institution charged with the custody of the child;
- (2) Proof that efforts were made to locate the parent(s) or any known relatives of the child. The following shall be considered sufficient:
 - (a) Written certification from a local or national radio or television station that the case was aired on three different occasions;
 - (b) Publication in one newspaper of general circulation;
 - (c) Police report or barangay certification from the locality where the child was found or a certified copy of a tracing report issued by the Philippine National Red Cross (PNRC), National Headquarters (NHQ), Social Service Division, which states that despite due diligence, the child's parents could not be found; and
 - (d) Returned registered mail to the last known address of the parent(s) or known relatives, if any.
- (3) Birth certificate, if available; and
- (4) Recent photograph of the child and photograph of the child upon abandonment or admission to the agency or institution.

SEC. 4. Procedure for the Filing of the Petition. – The petition shall be filed in the regional office of the DSWD where the child was found or abandoned.

The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition conspicuous place for five consecutive days in the locality where the child was found.

The Regional Director shall act on the same and shall render a recommendation not later than five working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within 48 hours from the date of the recommendation.

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SEC. 5. Declaration of Availability for Adoption. – Upon finding merit in the petition, the Secretary shall issue a certification declaring the child legally available for adoption within seven working days from receipt of the recommendation.

Said certification, by itself shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate. Within seven working days, the local civil registrar shall transmit the foundling certificate to the National Statistic Office (NSO).

SEC. 6. Appeal. – The decision of the Secretary shall be appealable to the Court of Appeals within five days from receipt of the decision by the petitioner, otherwise the same shall be final and executory.

SEC. 7. Declaration of Availability for Adoption of Involuntarily Committed Child and Voluntarily Committed Child. – The certificate declaring a child legally available for adoption in case of an involuntarily committed child under Article 141, paragraph 4(a) and Article 142 of Presidential Decree No. 603 shall be issued by the DSWD within three months following such involuntary commitment.

In case of voluntary commitment as contemplated in Article 154 of Presidential Decree No. 603, the certification declaring the child legally available for adoption shall be issued by the Secretary within three months following the filing of the Deed of Voluntary Commitment, as signed by the parent(s) with the DSWD.

Upon petition filed with the DSWD, the parent(s) or legal guardian who voluntarily committed a child may recover legal custody and parental authority over him/her from the agency or institution to which such child was voluntarily committed when it is shown to the satisfaction of the DSWD that the parent(s) or legal guardian is in a position to adequately provide for the needs of the child: *Provided*, That, the petition for restoration is filed within three months after the signing of the Deed of Voluntary Commitment.

SEC. 8. Certification. – The certification that a child is legally available for adoption shall be issued by the DSWD in lieu of a judicial order, thus making the entire process administrative in nature.

The certification, shall be, for all intents and purposes, the primary evidence that the child is legally available in a domestic adoption proceeding, as provided in Republic Act No. 8552 and in an inter-country adoption proceeding, as provided in Republic Act No. 8043.

SEC. 9. Implementing Rules and Regulations. – The DSWD, together with the Council for Welfare of Children, Inter-Country Adoption Board, two representatives from licensed or accredited child-placing and child-caring agencies or institution, National Statistics Office and Office of the Civil Registrar, is hereby tasked to draft the implementing rules and regulations of this Act within 60 days following its complete publication.

Upon effectivity of this Act and pending the completion of the drafting of the implementing rules and regulations, petitions for the issuance of a certification declaring a child legally available for adoption may be filed with the regional office of the DSWD where the child was found or abandoned.

SEC. 10. Penalty. – The penalty of One Hundred Thousand Pesos (P100,000) to Two Hundred Thousand Pesos (P200,000) shall be imposed on any person, institution, or agency who shall place a child for adoption without the certification that the child is legally available for adoption issued by the DSWD. Any agency or institution found violating any provision of this Act shall have its license to operate revoked without prejudice to the criminal prosecution of its officers and employees.

Violation of any provision of this Act shall subject the government official or employee concerned to appropriate administrative, civil and/or criminal sanctions, including suspension and/or dismissal from the government service and forfeiture of benefits.

SEC. 11. Repealing Clause. – Sections 2(c)(iii), 3(b), (e) and 8(a) of Republic Act No. 8552, Section 3(f) of Republic Act No. 8043, Chapter 1 of Titles VII, and VIII of Presidential Decree No. 603 and any law, presidential decree, executive order, letter of instruction, administrative order, rule, or regulation contrary to or inconsistent with the provisions of this Act are hereby repealed, modified or amended accordingly.

SEC. 12. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 13. *Effectivity.* – This Act shall take effect 15 days following its complete publication in two newspapers of general circulation or in the Official Gazette.

REPUBLIC ACT No. 9710
AN ACT PROVIDING FOR THE MAGNA CARTA OF WOMEN
Approved on August 14, 2009

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

CHAPTER I
GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known as “*The Magna Carta of Women.*”

SEC. 2. Declaration of Policy. – Recognizing that the economic, political, and sociocultural realities affect women’s current condition, the State affirms the role of women in nation building and ensures the substantive equality of women and men. It shall promote empowerment of women and pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome. Further, the State realizes that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality. To realize this, the State shall endeavor to develop plans, policies, programs, measures, and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men.

The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments consistent with Philippine law. The State shall accord women the rights, protection, and opportunities available to every member of society.

The State affirms women’s rights as human rights and shall intensify its efforts to fulfill its duties under international and domestic law to recognize, respect, protect, fulfill, and promote all human rights and fundamental freedoms of women, especially marginalized women, in the economic, social, political, cultural, and other fields without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status.

The State shall provide the necessary mechanisms to enforce women’s rights and adopt and undertake all legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic, social, and cultural realms.

The State, in ensuring the full integration of women’s concerns in the mainstream of development, shall provide ample opportunities to enhance and develop their skills, acquire productive employment and contribute to their families and communities to the fullest of their capabilities.

In pursuance of this policy, the State reaffirms the right of women in all sectors to participate in policy formulation, planning, organization, implementation, management, monitoring, and evaluation of all programs, projects, and services. It shall support policies, researches, technology, and training programs and other support services such as financing, production, and marketing to encourage active participation of women in national development.

SEC. 3. Principles of Human Rights of Women. – Human rights are universal and inalienable. All people in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights, which states that all human beings are free and equal in dignity and rights.

Human rights are indivisible. Human rights are inherent to the dignity of every human being whether they relate to civil, cultural, economic, political, or social issues.

Human rights are interdependent and interrelated. The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others.

All individuals are equal as human beings by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards.

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples, and other identified groups.

States and other duty-bearers are answerable for the observance of human rights. They have to comply with the legal norms and standards enshrined in international human rights instruments in accordance with the Philippine Constitution. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

CHAPTER II

DEFINITION OF TERMS

SEC. 4. Definitions. – For purposes of this Act, the following terms shall mean:

- (a) *Women Empowerment* refers to the provision, availability, and accessibility of opportunities, services, and observance of human rights which enable women to actively participate and contribute to the political, economic, social, and cultural development of the nation as well as those which shall provide them equal access to ownership, management, and control of production, and of material and informational resources and benefits in the family, community, and society.
- (b) *Discrimination Against Women* refers to any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges.

A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices.

Provided, finally, That discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under this Act.

- (c) *Marginalization* refers to a condition where a whole category of people is excluded from useful and meaningful participation in political, economic, social, and cultural life.
- (d) *Marginalized* refers to the basic, disadvantaged, or vulnerable persons or groups who are mostly living in poverty and have little or no access to land and other resources, basic social and economic services such as health care, education, water and sanitation, employment and livelihood opportunities, housing, social security, physical infrastructure; and the justice system.

These include, but are not limited to, women in the following sectors and groups:

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- (1) *Small Farmers and Rural Workers* refers to those who are engaged directly or indirectly in small farms and forest areas, workers in commercial farms and plantations, whether paid or unpaid, regular or season-bound. These shall include but are not limited to, (a) small farmers who own or are still amortizing for lands that is not more than three hectares, tenants, leaseholders, and stewards; and (b) rural workers who are either wage earners, self-employed, unpaid family workers directly and personally engaged in agriculture, small-scale mining, handicrafts, and other related farm and off-farm activities;
- (2) *Fisherfolk* refers to those directly or indirectly engaged in taking, culturing, or processing fishery or aquatic resources. These include, but are not to be limited to, women engaged in fishing in municipal waters, coastal and marine areas, women workers in commercial fishing and aquaculture, vendors and processors of fish and coastal products, and subsistence producers such as shell-gatherers, managers, and producers of mangrove resources, and other related producers;
- (3) *Urban Poor* refers to those residing in urban and urbanizable slum or blighted areas, with or without the benefit of security of abode, where the income of the head of the family cannot afford in a sustained manner to provide for the family's basic needs of food, health, education, housing, and other essentials in life;
- (4) *Workers in the Formal Economy* refers to those who are employed by any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government and all its branches, subdivisions, and instrumentalities, all government- owned and -controlled corporations and institutions, as well as nonprofit private institutions or organizations;
- (5) *Workers in the Informal Economy* refers to self-employed, occasionally or personally hired, subcontracted, paid and unpaid family workers in household incorporated and unincorporated enterprises, including home workers, micro-entrepreneurs and producers, and operators of sari-sari stores and all other categories who suffer from violation of workers' rights:
- (6) *Migrant Workers* refers to Filipinos who are to be engaged, are engaged, or have been engaged in a remunerated activity in a State of which they are not legal residents, whether documented or undocumented;
- (7) *Indigenous Peoples* refers to a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied; possessed customs, tradition, and other distinctive cultural traits, or who have, through resistance to political, social, and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. They shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural, and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains as defined under Section 3(h), Chapter II of Republic Act No. 8371, otherwise known as "The Indigenous Peoples Rights Act of 1997" (IPRA of 1997);
- (8) *Moro* refers to native peoples who have historically inhabited Mindanao, Palawan, and Sulu, and who are largely of the Islamic faith;
- (9) *Children* refers to those who are below 18 years of age or over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition;
- (10) *Senior Citizens* refer to those 60 years of age and above;
- (11) *Persons with Disabilities* refers to those who are suffering from restriction or different abilities, as a result of a mental, physical, or sensory impairment to perform an activity in the manner or within the range considered normal for a human being; and

(12) *Solo Parents* refers to those who fall under the category of a solo parent defined under Republic Act No. 8972, otherwise known as the “Solo Parents Welfare Act of 2000.”

- (e) *Substantive Equality* refers to the full and equal enjoyment of rights and freedoms contemplated under this Act. It encompasses *de jure* and *de facto* equality and also equality in outcomes.
- (f) *Gender Equality* refers to the principle asserting the equality of men and women and their right to enjoy equal conditions realizing their full human potentials to contribute to and benefit from the results of development, and with the State recognizing that all human beings are free and equal in dignity and rights.
- (g) *Gender Equity* refers to the policies, instruments, programs, services, and actions that address the disadvantaged position of women in society by providing preferential treatment and affirmative action. Such temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discriminatory but shall in no way entail as a consequence the maintenance of unequal or separate standards. These measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
- (h) *Gender and Development (GAD)* refers to the development perspective and process that are participatory and empowering, equitable, sustainable, free from violence, respectful of human rights, supportive of self-determination and actualization of human potentials. It seeks to achieve gender equality as a fundamental value that should be reflected in development choices; seeks to transform society’s social, economic, and political structures and questions the validity of the gender roles they ascribed to women and men; contends that women are active agents of development and not just passive recipients of development assistance; and stresses the need of women to organize themselves and participate in political processes to strengthen their legal rights.
- (i) *Gender Mainstreaming* refers to the strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programs in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated. It is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programs in all areas and at all levels.
- (j) *Temporary Special Measures* refers to a variety of legislative, executive, administrative, and regulatory instruments, policies, and practices aimed at accelerating this *de facto* equality of women in specific areas. These measures shall not be considered discriminatory but shall in no way entail as a consequence the maintenance of unequal or separate standards. They shall be discontinued when their objectives have been achieved.
- (k) *Violence Against Women* refers to any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life. It shall be understood to encompass, but not limited to, the following:
- (1) Physical, sexual, psychological, and economic violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation;
 - (2) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women, and prostitution; and
 - (3) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.
- It also includes acts of violence against women as defused in Republic Acts No. 9208 and 9262.
- (l) *Women in the Military* refers to women employed in the military, both in the major and technical services, who are performing combat and/or noncombat functions, providing security to the State, and protecting the people from various forms of threat. It also includes women trainees in all military training institutions.

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(m) *Social Protection* refers to policies and programs that seek to reduce poverty and vulnerability to risks and enhance the social status and rights of all women, especially the marginalized by promoting and protecting livelihood and employment, protecting against hazards and sudden loss of income, and improving people's capacity to manage risk. Its components are labor market programs, social insurance, social welfare, and social safety nets.

CHAPTER III

DUTIES RELATED TO THE HUMAN RIGHTS OF WOMEN

The State, private sector, society in general, and all individuals shall contribute to the recognition, respect, and promotion of the rights of women defined and guaranteed under this Act.

SEC. 5. *The State as the Primary Duty-Bearer.* – The State, as the primary duty-bearer, shall:

- (a) Refrain from discriminating against women and violating their rights;
- (b) Protect women against discrimination and from violation of their rights by private corporations, entities, and individuals; and
- (c) Promote and fulfill the rights of women in all spheres, including their rights to substantive equality and non-discrimination.

The State shall fulfill these duties through law, policy, regulatory instruments, administrative guidelines, and other appropriate measures, including temporary special measures.

Recognizing the interrelation of the human rights of women, the State shall take measures and establish mechanisms to promote the coherent and integrated implementation, and enforcement of this Act and related laws, policies, or other measures to effectively stop discrimination against and advance the rights of women.

The State shall keep abreast with and be guided by progressive developments in human rights of women under international law and design of policies, laws, and other measures to promote the objectives of this Act.

SEC. 6. *Duties of the State Agencies and Instrumentalities.* – These duties of the State shall extend to all state agencies, offices, and instrumentalities at all levels and government-owned and -controlled corporations, subject to the Constitution and pertinent laws, policies, or administrative guidelines that define specific duties of state agencies and entities concerned.

SEC. 7. *Supplementary Effect.* – This chapter shall be deemed integrated into and be supplementary to other provisions of this Act, particularly those that guarantee specific rights to women and define specific roles and require specific conduct of state organs.

CHAPTER IV

RIGHTS AND EMPOWERMENT

SECTION 8. *Human Rights of Women.* – All rights in the Constitution and those rights recognized under international instruments duly signed and ratified by the Philippines, in consonance with Philippine law, shall be rights of women under this Act to be enjoyed without discrimination.

SEC. 9. *Protection from Violence.* – The State shall ensure that all women shall be protected from all forms of violence as provided for in existing laws. Agencies of government shall give priority to the defense and protection of women against gender-based offenses and help women attain justice and healing.

Towards this end, measures to prosecute and reform offenders shall likewise be pursued.

- (a) Within the next 5 years, there shall be an incremental increase in the recruitment and training of women in the police force, forensics and medico-legal, legal services, and social work services availed of by women who are victims of gender-related offenses until 50 percent of the personnel thereof shall be women.
- (b) Women shall have the right to protection and security in situations of armed conflict and militarization. Towards this end, they shall be protected from all forms of gender-based violence, particularly rape and other forms of sexual abuse, and all forms of violence in situations of armed conflict. The State shall observe international standards for the protection of civilian population in circumstances of emergency and armed conflict. It shall not force women, especially indigenous peoples, to abandon their lands, territories, and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.
- (c) All government personnel involved in the protection and defense of women against gender-based violence shall undergo a mandatory training on human rights and gender sensitivity pursuant to this Act.
- (d) All local government units shall establish a Violence Against Women's Desk in every *barangay* to ensure that violence against women cases are fully addressed in a gender-responsive manner.

SEC. 10. Women Affected by Disasters, Calamities, and Other Crisis Situations. – Women have the right to protection and security in times of disasters, calamities, and other crisis situations especially in all phases of relief, recovery, rehabilitation, and construction efforts. The State shall provide for immediate humanitarian assistance, allocation of resources, and early resettlement, if necessary. It shall also address the particular needs of women from a gender perspective to ensure their full protection from sexual exploitation and other sexual and gender-based violence committed against them. Responses to disaster situations shall include the provision of services, such as psychosocial support, livelihood support, education, psychological health, and comprehensive health services, including protection during pregnancy.

SEC. 11. Participation and Representation. – The State shall undertake temporary special measures to accelerate the participation and equitable representation of women in all spheres of society particularly in the decision-making and policy-making processes in government and private entities to fully realize their role as agents and beneficiaries of development.

The State shall institute the following affirmative action mechanisms so that women can participate meaningfully in the formulation, implementation, and evaluation of policies, plans, and programs for national, regional, and local development:

- (a) *Empowerment within the Civil Service.* – Within the next five years, the number of women in third level positions in government shall be incrementally increased to achieve a fifty-fifty gender balance;
- (b) *Development Councils and Planning Bodies.* – To ensure the participation of women in all levels of development planning and program implementation, at least 40 percent of membership of all development councils from the regional, provincial, city, municipal and barangay levels shall be composed of women;
- (c) *Other Policy and Decision-Making Bodies.* – Women's groups shall also be represented in international, national, and local special and decision-making bodies;
- (d) *International Bodies.* – The State shall take all appropriate measures to ensure the opportunity of women, on equal terms with men and without any discrimination, to represent their governments at the international level and to participate in the work of international organizations;
- (e) *Integration of Women in Political Parties.* – The State shall provide incentives to political parties with women's agenda. It shall likewise encourage the integration of women in their leadership hierarchy, internal policy-making structures, appointive, and electoral nominating processes; and
- (f) *Private Sector.* – The State shall take measures to encourage women leadership in the private sector in the form of incentives.

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SEC. 12. *Equal Treatment Before the Law.* – The State shall take steps to review and, when necessary, amend and/or repeal existing laws that are discriminatory to women within three years from the effectivity of this Act.

SEC. 13. *Equal Access and Elimination of Discrimination in Education, Scholarships, and Training.*

- (a) The State shall ensure that gender stereotypes and images in educational materials and curricula are adequately and appropriately revised. Gender-sensitive language shall be used at all times. Capacity-building on gender and development (GAD), peace and human rights, education for teachers, and all those involved in the education sector shall be pursued toward this end. Partnerships between and among players of the education sector, including the private sector, churches, and faith groups shall be encouraged.
- (b) Enrollment of women in nontraditional skills training in vocational and tertiary levels shall be encouraged.
- (c) Expulsion and non-readmission of women faculty due to pregnant outside of marriage shall be outlawed. No school shall turn out or refuse admission to a female student solely on the account of her having contracted pregnancy outside of marriage during her term in school.

SEC. 14. *Women in Sports.* – The State shall develop, establish, and strengthen programs for the participation of women and girl-children in competitive and noncompetitive sports as a means to achieve excellence, promote physical and social well-being, eliminate gender-role stereotyping, and provide equal access to the full benefits of development for all persons regardless of sex, gender identity, and other similar factors.

For this purpose, all sports-related organizations shall create guidelines that will establish and integrate affirmative action as a strategy and gender equality as a framework in planning and implementing their policies, budgets, programs, and activities relating to the participation of women and girls in sports.

The State will also provide material and nonmaterial incentives to local government units, media organizations, and the private sector for promoting, training, and preparing women and girls for participation in competitive and noncompetitive sports, especially in local and international events, including, but not limited to, the *Palarong Pambansa*, Southeast Asian Games, Asian Games, and the Olympics.

No sports event or tournament will offer or award a different sports prize, with respect to its amount or value, to women and men winners in the same sports category: *Provided*, That the said tournament, contest, race, match, event, or game is open to both sexes: *Provided, further*, That the sports event or tournament is divided into male or female divisions.

The State shall also ensure the safety and well-being of all women and girls participating in sports, especially, but not limited to, trainees, reserve members, members, coaches, and mentors of national sports teams, whether in studying, training, or performance phases, by providing them comprehensive health and medical insurance coverage, as well as integrated medical, nutritional, and healthcare services.

Schools, colleges, universities, or any other learning institution shall take into account its total women student population in granting athletic scholarship. There shall be a *pro rata* representation of women in the athletic scholarship program based on the percentage of women in the whole student population.

SEC. 15. *Women in the Military.* – The State shall pursue appropriate measures to eliminate discrimination of women in the military, police, and other similar services, including revising or abolishing policies and practices that restrict women from availing of both combat and noncombat training that are open to men, or from taking on functions other than administrative tasks, such as engaging in combat, security-related, or field operations. Women in the military shall be accorded the same promotional privileges and opportunities as men, including pay increases, additional remunerations and benefits, and awards based on their competency and quality of performance. Towards this end, the State shall ensure that the personal dignity of women shall always be respected.

Women in the military, police, and other similar services shall be provided with the same right to employment as men on equal conditions. Equally, they shall be accorded the same capacity as men to act in and enter into contracts, including marriage.

Further, women in the military, police; and other similar services shall be entitled to leave benefits such as maternity leave, as provided for by existing laws.

SEC. 16. *Nondiscriminatory and Nonderogatory Portrayal of Women in Media and Film.* – The State shall formulate policies and programs for the advancement of women in collaboration with government and nongovernment media-related organizations. It shall likewise endeavor to raise the consciousness of the general public in recognizing the dignity of women and the role and contribution of women in the family; community, and the society through the strategic use of mass media.

For this purpose, the State shall ensure allocation of space; airtime, and resources, strengthen programming, production, and image-making that appropriately present women’s needs, issues, and concerns in all forms of media, communication, information dissemination, and advertising.

The State, in cooperation with all schools of journalism, information, and communication, as well as the national media federations and associations, shall require all media organizations and corporations to integrate into their human resource development components regular training on gender equality and gender-based discrimination, create and use gender equality guidelines in all aspects of management, training, production, information, dissemination, communication, and programming; and convene a gender equality committee that will promote gender mainstreaming as a framework and affirmative action as a strategy, and monitor and evaluate the implementation of gender equality guidelines.

SEC. 17. *Women’s Right to Health.*

(a) *Comprehensive Health Services.* – The State shall, at all times, provide for a comprehensive, culture-sensitive, and gender-responsive health services and programs covering all stages of a woman’s life cycle and which addresses the major causes of women’s mortality and morbidity: *Provided*, That in the provision for comprehensive health services, due respect shall be accorded to women’s religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood, and the right of women to protection from hazardous drugs, devices, interventions, and substances.

Access to the following services shall be ensured:

- (1) Maternal care to include pre- and post-natal services to address pregnancy and infant health and nutrition;
- (2) Promotion of breastfeeding;
- (3) Responsible, ethical, legal, safe, and effective methods of family planning;
- (4) Family and State collaboration in youth sexuality education and health services without prejudice to the primary right and duty of parents to educate their children;
- (5) Prevention and management of reproductive tract infections, including sexually transmitted diseases, HIV, and AIDS;
- (6) Prevention and management of reproductive tract cancers like breast and cervical cancers, and other gynecological conditions and disorders;
- (7) Prevention of abortion and management of pregnancy-related complications;
- (8) In cases of violence against women and children, women and children victims and survivors shall be provided with comprehensive health services that include psychosocial, therapeutic, medical, and legal interventions and assistance towards healing, recovery, and empowerment;
- (9) Prevention and management of infertility and sexual dysfunction pursuant to ethical norms and medical standards;
- (10) Care of the elderly women beyond their child-bearing years; and

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(11) Management, treatment, and intervention of mental health problems of women and girls.

In addition, healthy lifestyle activities are encouraged and promoted through programs and projects as strategies in the prevention of diseases.

(b) *Comprehensive Health Information and Education.* – The State shall provide women in all sectors with appropriate, timely, complete, and accurate information and education on all the above-stated aspects of women’s health in government education and training programs, with due regard to the following:

(1) The natural and primary right and duty of parents in the rearing of the youth and the development of moral character and the right of children to be brought up in an atmosphere of morality and rectitude for the enrichment and strengthening of character;

(2) The formation of a person’s sexuality that affirms human dignity; and

(3) Ethical, legal, safe, and effective family planning methods including fertility awareness.

SEC. 18. *Special Leave Benefits for Women.* – A woman employee having rendered continuous aggregate employment service of at least six months for the last 12 months shall be entitled to a special leave benefit of two months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders.

SEC. 19. *Equal Rights in All Matters Relating to Marriage and Family Relations.* – The State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure:

(a) The same rights to enter into and leave marriages or common law relationships referred to under the Family Code without prejudice to personal or religious beliefs;

(b) The same rights to choose freely a spouse and to enter into marriage only with their free and full consent. The betrothal and the marriage of a child shall have no legal effect;

(c) The joint decision on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(d) The same personal rights between spouses or common law spouses including the right to choose freely a profession and an occupation;

(e) The same rights for both spouses or common law spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property;

(f) The same rights to properties and resources, whether titled or not, and inheritance, whether formal or customary; and

(g) Women shall have equal rights with men to acquire, change, or retain their nationality. The State shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. Various statutes of other countries concerning dual citizenship that may be enjoyed equally by women and men shall likewise be considered.

Customary laws shall be respected: *Provided, however,* That they do not discriminate against women.

CHAPTER V

RIGHTS AND EMPOWERMENT OF MARGINALIZED SECTORS

Women in marginalized sectors are hereby guaranteed all civil, political, social, and economic rights recognized, promoted, and protected under existing laws including, but not limited to, the Indigenous Peoples’ Rights Act, the Urban Development and Housing Act, the Comprehensive Agrarian Reform Law, the Fisheries Code, the Labor Code, the Migrant Workers Act, the Solo Parents Welfare Act, and the Social Reform and Poverty Alleviation Act.

SEC. 20. Food Security and Productive Resources. – The State recognizes the contribution of women to food production and shall ensure its sustainability and sufficiency with the active participation of women. Towards this end, the State shall guarantee, at all times, the availability in the market of safe and health-giving food to satisfy the dietary needs of the population, giving particular attention to the specific needs of poor girl-children and marginalized women, especially pregnant and lactating mothers and their young children. To further address this, the State shall ensure:

- (a) *Right to Food.* – The State shall guarantee the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, the physical and economic accessibility for everyone to adequate food that is culturally acceptable and free from unsafe substances and culturally accepted, and the accurate and substantial information to the availability of food, including the right to full, accurate, and truthful information about safe and health-giving foods and how to produce and have regular and easy access to them;
- (b) *Right to Resources for Food Production.* – The State shall guarantee women a vital role in food production by giving priority to their rights to land, credit, and infrastructure support, technical training, and technological and marketing assistance. The State shall promote women-friendly technology as a high priority activity in agriculture and shall promote the right to adequate food by proactively engaging in activities intended to strengthen access to, utilization of, and receipt of accurate and substantial information on resources and means to ensure women’s livelihood, including food security:
 - (1) Equal status shall be given to women and men, whether married or not, in the titling of the land and issuance of stewardship contracts and patents;
 - (2) Equal treatment shall be given to women and men beneficiaries of the agrarian reform program, wherein the vested right of a woman agrarian reform beneficiary is defined by a woman’s relationship to tillage, *i.e.*, her direct and indirect contribution to the development of the land;
 - (3) Customary rights of women to the land, including access to and control of the fruits and benefits, shall be recognized in circumstances where private ownership is not possible, such as ancestral domain claims;
 - (4) Information and assistance in claiming rights to the land shall be made available to women at all times;
 - (5) Equal rights to women to the enjoyment, use, and management of land, water, and other natural resources within their communities or ancestral domains;
 - (6) Equal access to the use and management of fisheries and aquatic resources, and all the rights and benefits accruing to stakeholders in the fishing industry;
 - (7) Equal status shall be given to women and men in the issuance of stewardship or lease agreements and other fishery rights that may be granted for the use and management of coastal and aquatic resources. In the same manner, women’s organizations shall be given equal treatment as with other marginalized fishers organizations in the issuance of stewardship or lease agreements or other fishery rights for the use and management of such coastal and aquatic resources which may include providing support to women-engaged coastal resources;
 - (8) There shall be no discrimination against women in the deputization of fish wardens;
 - (9) Women-friendly and sustainable agriculture technology shall be designed based on accessibility and viability in consultation with women’s organizations;
 - (10) Access to small farmer-based and controlled seeds production and distribution shall be ensured and protected;
 - (11) Indigenous practices of women in seed storage and cultivation shall be recognized, encouraged, and protected;
 - (12) Equal rights shall be given to women to be members of farmers’ organizations to ensure wider access to and control of the means of production;

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(13) Provide opportunities for empowering women fishers to be involved in the control and management, not only of the catch and production of aquamarine resources but also, to engage in entrepreneurial activities which will add value to production and marketing ventures; and

(14) Provide economic opportunities for the indigenous women, particularly access to market for their produce.

In the enforcement of the foregoing, the requirements of law shall be observed at all times.

SEC. 21. Right to Housing. – The State shall develop housing programs for women that are localized, simple, accessible, with potable water, and electricity, secure, with viable employment opportunities and affordable amortization. In this regard, the State shall consult women and involve them in community planning and development, especially in matters pertaining to land use, zoning, and relocation.

SEC. 22. Right to Decent Work. – The State shall progressively realize and ensure decent work standards for women that involve the creation of jobs of acceptable quality in conditions of freedom, equity, security, and human dignity.

(a) Decent work involves opportunities for work that are productive and fairly remunerative as family living wage, security in the workplace, and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize, participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.

(b) The State shall further ensure:

(1) Support services and gears to protect them from occupational and health hazards taking into account women's maternal functions;

(2) Support services that will enable women to balance their family obligations and work responsibilities including, but not limited to, the establishment of day care centers and breast-feeding stations at the workplace, and providing maternity leave pursuant to the Labor Code and other pertinent laws;

(3) Membership in unions regardless of status of employment and place of employment; and

(4) Respect for the observance of indigenous peoples' cultural practices even in the workplace.

(c) In recognition of the temporary nature of overseas work, the State shall exert all efforts to address the causes of out-migration by developing local employment and other economic opportunities for women and by introducing measures to curb violence and forced and involuntary displacement of local women. The State shall ensure the protection and promotion of the rights and welfare of migrant women regardless of their work status, and protect them against discrimination in wages, conditions of work, and employment opportunities in host countries.

SEC. 23. Right to Livelihood, Credit, Capital, and Technology. – The State shall ensure that women are provided with the following:

(a) Equal access to formal sources of credit and capital;

(b) Equal share to the produce of farms and aquatic resources; and

(c) Employment opportunities for returning women migrant workers taking into account their skills and qualifications. Corollarily, the State shall also promote skills and entrepreneurship development of returning women migrant workers.

SEC. 24. Right to Education and Training. – The State shall ensure the following:

(a) Women migrant workers have the opportunity to undergo skills training, if they so desire, before taking on a foreign job, and possible retraining upon return to the country:

(b) Gender-sensitive training and seminars; and

- (c) Equal opportunities in scholarships based on merit and fitness, especially to those interested in research and development aimed towards women-friendly farm technology.

SEC. 25. Right to Representation and Participation. – The State shall ensure women’s participation in policy-making or decision-making bodies in the regional, national, and international levels. It shall also ensure the participation of grassroots women leaders in decision and policy-making bodies in their respective sectors including, but not limited to, the Presidential Agrarian Reform Council (PARC) and its local counterparts; community-based resource management bodies or mechanisms on forest management and stewardship; the National Fisheries and Aquatic Resources Management Council (NFARMC) and its local counterparts; the National Commission on Indigenous Peoples; the Presidential Commission for the Urban Poor; the National Anti-Poverty Commission; and, where applicable, the local housing boards.

SEC. 26. Right to Information. – Access to information regarding policies on women, including programs, projects, and funding outlays that affect them, shall be ensured.

SEC. 27. Social Protection.

- (a) The Social Security System (SSS) and the Philippine Health Insurance Corporation (PhilHealth) shall support indigenous and community-based social protection schemes.
- (b) The State shall institute policies and programs that seek to reduce the poverty and vulnerability to risks and enhance the social status and rights of the marginalized women by promoting and protecting livelihood and employment, protecting against hazards and sudden loss of income, and improving people’s capacity to manage risks.
- (c) The State shall endeavor to reduce and eventually eliminate transfer costs of remittances from abroad through appropriate bilateral and multilateral agreements. It shall likewise provide access to investment opportunities for remittances in line with national development efforts.
- (d) The State shall establish a health insurance program for senior citizens and indigents.
- (e) The State shall support women with disabilities on a community-based social protection scheme.

Sec. 28. Recognition and Preservation of Cultural Identity and Integrity. – The State shall recognize and respect the rights of Moro and indigenous women to practice, promote, protect, and preserve their own culture, traditions, and institutions and to consider these rights in the formulation and implementation of national policies and programs. To this end, the State shall adopt measures in consultation with the sectors concerned to protect their rights to their indigenous knowledge systems and practices, traditional livelihood, and other manifestations of their cultures and ways of life: *Provided*, That these cultural systems and practices are not discriminatory to women.

Sec. 29. Peace and Development. – The peace process shall be pursued with the following considerations:

- (a) Increase the number of women participating in discussions and decision-making in the peace process, including membership in peace panels recognizing women’s role in conflict-prevention and peace-making and in indigenous system of conflict resolution;
- (b) Ensure the development and inclusion of women’s welfare and concerns in the peace agenda in the overall peace strategy and women’s participation in the planning, implementation, monitoring, and evaluation of rehabilitation and rebuilding of conflict-affected areas;
- (c) The institution of measures to ensure the protection of civilians in conflict-affected communities with special consideration for the specific needs of women and girls;
- (d) Include the peace perspective in the education curriculum and other educational undertakings; and
- (e) The recognition and support for women’s role in conflict-prevention, management, resolution and peacemaking, and in indigenous systems of conflict resolution.

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SEC. 30. *Women in Especially Difficult Circumstances.* – For purposes of this Act, “Women in Especially Difficult Circumstances” (WEDC) shall refer to victims and survivors of sexual and physical abuse, illegal recruitment, prostitution, trafficking, armed conflict, women in detention, victims and survivors of rape and incest, and such other related circumstances which have incapacitated them functionally. Local government units (LGUs) are therefore mandated to deliver the necessary services and interventions to WEDC under their respective jurisdictions.

SEC. 31. *Services and Interventions.* – WEDC shall be provided with services and interventions as necessary such as, but not limited to, the following:

- (a) Temporary and protective custody;
- (b) Medical and dental services;
- (c) Psychological evaluation;
- (d) Counseling;
- (e) Psychiatric evaluation;
- (f) Legal services;
- (g) Productivity skills capability building;
- (h) Livelihood assistance;
- (i) Job placement;
- (j) Financial assistance: and
- (k) Transportation assistance.

SEC. 32. *Protection of Girl-Children.*

- (a) The State shall pursue measures to eliminate all forms of discrimination against girl-children in education, health and nutrition, and skills development.
- (b) Girl-children shall be protected from all forms of abuse and exploitation.
- (c) Equal access of Moro and indigenous girl-children in the Madaris, schools of living culture and traditions, and the regular schools shall be ensured.
- (d) Gender-sensitive curriculum, including legal literacy, books, and curriculum in the Madaris and schools of living culture and traditions shall be developed.
- (e) Sensitivity of regular schools to particular Moro and indigenous practices, such as fasting in the month of Ramadan, choice of clothing (including the wearing of *hijab*), and availability of *halal* food shall be ensured.

SEC. 33. *Protection of Senior Citizens.* – The State shall protect women senior citizens from neglect, abandonment, domestic violence, abuse, exploitation, and discrimination. Towards this end, the State shall ensure special protective mechanisms and support services against violence, sexual abuse, exploitation, and discrimination of older women.

SEC. 34. Women are entitled to the recognition and protection of their rights defined and guaranteed under this Act including their right to nondiscrimination.

SEC. 35. *Discrimination Against Women is Prohibited.* – Public and private entities and individuals found to have committed discrimination against women shall be subject to the sanctions provided in Section 41 hereof. Violations of other rights of women shall be subject to sanctions under pertinent laws and regulations.

CHAPTER VI

INSTITUTIONAL MECHANISMS

SECTION 36. *Gender Mainstreaming as a Strategy for Implementing the Magna Carta of Women.* – Within a period prescribed in the implementing rules and regulations, the National Commission on the Role of Filipino Women (NCRFW) shall assess its gender mainstreaming program for consistency with the standards under this Act. It shall modify the program accordingly to ensure that it will be an effective strategy for implementing this Act and attaining its objectives.

All departments, including their attached agencies, offices, bureaus, state universities and colleges, government-owned and -controlled corporations (GOCCs), LGUs, and other government instrumentalities shall adopt gender mainstreaming as a strategy to promote women’s human rights and eliminate gender discrimination in their systems, structures, policies, programs, processes, and procedures which shall include, but not limited to, the following:

- (a) *Planning, budgeting, monitoring and evaluation for GAD.* GAD programs addressing gender issues and concerns shall be designed and implemented based on the mandate of government agencies and LGUs, Republic Act No. 7192, gender equality agenda of the government and other GAD-related legislation, policies, and commitments. The development of GAD programs shall proceed from the conduct of a gender audit of the agency or the LGU and a gender analysis of its policies, programs, services and the situation of its clientele; the generation and review of sex-disaggregated data; and consultation with gender/women’s rights advocates and agency/women clientele. The cost of implementing GAD programs shall be the agency’s or the LGU’s GAD budget which shall be at least 5 percent of the agency’s or the LGU’s total budget appropriations.

Pursuant to Republic Act No. 7192, otherwise known as the Women in Development and Nation Building Act, which allocates 5 percent to 30 percent of overseas development assistance to GAD, government agencies receiving official development assistance should ensure the allocation and proper utilization of such funds to gender-responsive programs that complement the government GAD funds and annually report accomplishments thereof to the National Economic and Development Authority (NEDA) and the Philippine Commission on Women (PCW).

The utilization and outcome of the GAD budget shall be annually monitored and evaluated in terms of its success in influencing the gender-responsive implementation of agency programs funded by the remaining 95 percent budget.

The Commission on Audit (COA) shall conduct an annual audit on the use of the GAD budget for the purpose of determining its judicious use and the efficiency, and effectiveness of interventions in addressing gender issues towards the realization of the objectives of the country’s commitments, plans, and policies on women empowerment, gender equality, and GAD.

LGUs are also encouraged to develop and pass a GAD Code based on the gender issues and concerns in their respective localities based on consultation with their women constituents and the women’s empowerment and gender equality agenda of the government. The GAD Code shall also serve as basis for identifying programs, activities, and projects on GAD.

Where needed, temporary gender equity measures shall be provided for in the plans of all departments, including their attached agencies, offices, bureaus, state universities and colleges, GOCCs, LGUs, and other government instrumentalities.

To move towards a more sustainable, gender-responsive, and performance-based planning and budgeting, gender issues and concerns shall be integrated in, among others, the following plans:

- (1) Macro socioeconomic plans such as the Medium-Term Philippine Development Plan and Medium-Term Philippine Investment Plan;

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- (2) Annual plans of all departments, including their attached agencies, offices, bureaus, state universities and colleges, and GOCCs; and
- (3) Local plans and agenda such as executive-legislative agenda, comprehensive development plan (CDP), comprehensive land use plan (CLUP), provincial development and physical framework plan (PDPFP), and annual investment plan.

(b) *Creation and/or Strengthening of the GAD Focal Points (GFP)*. All departments, including their attached agencies, offices, bureaus, state universities and colleges, GOCCs, LGUs, and other government instrumentalities shall establish or strengthen their GAD Focal Point System or similar GAD mechanism to catalyze and accelerate gender mainstreaming within the agency or LGU.

The GAD Focal Point System shall be composed of the agency head or local chief executive, an executive committee with an Undersecretary (or its equivalent), LGU official, or office in a strategic decision-making position as Chair; and a technical working group or secretariat which is composed of representatives from various divisions or offices within the agency or LGU.

The tasks and functions of the members of the GFP shall form part of their regular key result areas and shall be given due consideration in their performance evaluation.

(c) *Generation and Maintenance of GAD Database*. All departments, including their attached agencies, offices, bureaus, state universities and colleges, GOCCs, LGUs, and other government instrumentalities shall develop and maintain a GAD database containing gender statistics and sex disaggregated data that have been systematically gathered, regularly updated; and subjected to; gender analysis for planning, programming, and policy formulation.

SEC. 37. Gender Focal Point Officer in Philippine Embassies and Consulates. – An officer duly trained on GAD shall be designated as the gender focal point in the consular section of Philippine embassies or consulates. Said officer shall be primarily responsible in handling gender concerns of women migrant workers. Attached agencies shall cooperate in strengthening the Philippine foreign posts’ programs for the delivery of services to women migrant workers.

SEC. 38. National Commission on the Role of Filipino Women (NCRFW). – The NCRFW shall be renamed as the Philippine Commission on Women (PCW), the primary policy-making and coordinating body of the women and gender equality concerns under the Office of the President. The PCW shall be the overall monitoring body and oversight to ensure the implementation of this Act. In doing so, the PCW may direct any government agency and instrumentality, as may be necessary, to report on the implementation of this Act and for them to immediately respond to the problems brought to their attention in relation to this Act. The PCW shall also lead in ensuring that government agencies are capacitated on the effective implementation of this Act. The chairperson shall likewise report to the President in Cabinet meetings on the implementation of this Act.

To the extent possible, the PCW shall influence the systems, processes, and procedures of the executive, legislative, and judicial branches of government *vis-a-vis* GAD to ensure the implementation of this Act.

To effectively and efficiently undertake and accomplish its functions, the PCW shall revise its structure and staffing pattern with the assistance of the Department of Budget and Management.

SEC. 39. Commission on Human Rights (CHR). – The Commission, acting as the Gender and Development Ombud, consistent with its mandate, shall undertake measures such as the following:

- (a) Monitor with the PCW and other state agencies, among others, in developing indicators and guidelines to comply with their duties related to the human rights of women, including their right to nondiscrimination guaranteed under this Act;
- (b) Designate one commissioner and/or its Women’s Human Rights Center to be primarily responsible for formulating and implementing programs and activities related to the promotion and protection of the human

rights of women, including the investigations and complaints of discrimination and violations of their rights brought under this Act and related laws and regulations;

- (c) Establish guidelines and mechanisms, among others, that will facilitate access of women to legal remedies under this Act and related laws, and enhance the protection and promotion of the rights of women, especially marginalized women;
- (d) Assist in the filing of cases against individuals, agencies, institutions, or establishments that violate the provisions of this Act; and
- (e) Recommend to the President of the Philippines or the Civil Service Commission (CSC) any possible administrative action based on noncompliance or failure to implement the provisions of this Act.

SEC. 40. Monitoring Progress and Implementation and Impact of this Act. – The PCW, in coordination with other state agencies and the CHR, shall submit to Congress regular reports on the progress of the implementation of this Act highlighting the impact thereof on the status and human rights of women: *Provided*, That the second report shall include an assessment of the effectiveness of this Act and recommend amendments to improve its provisions: *Provided, finally*, That these reports shall be submitted to Congress every three years or as determined in the implementing rules and regulations.

SEC. 41. Penalties. – Upon finding of the CHR that a department, agency, or instrumentality of government, GOCC, or LGU has violated any provision of this Act and its implementing rules and regulations, the sanctions under administrative law, civil service, or other appropriate laws shall be recommended to the CSC and/or the Department of the Interior and Local Government. The person directly responsible for the violation as well as the head of the agency or local chief executive shall be held liable under this Act.

If the violation is committed by a private entity or individual, the person directly responsible for the violation shall be liable to pay damages.

Filing a complaint under this Act shall not preclude the offended party from pursuing other remedies available under the law and to invoke any of the provisions of existing laws especially those recently enacted laws protecting women and children, including the Women in Development and Nation Building Act (Republic Act No. 7192), the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (Republic Act No. 7610), the Anti-Sexual Harassment Act of 1995 (Republic Act No. 7877), the Anti-Rape Law of 1997 (Republic Act No. 8353), the Rape Victim Assistance and Protection Act of 1998 (Republic Act No. 8505), the Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208) and the Anti- Violence Against Women and Their Children Act of 2004 (Republic Act No. 9262). If violence has been proven to be perpetrated by agents of the State including, but not limited to, extrajudicial killings, enforced disappearances, torture, and internal displacements, such shall be considered aggravating offenses with corresponding penalties depending on the severity of the offenses.

SEC. 42. Incentives and Awards. – There shall be established an incentives and awards system which shall be administered by a board under such rules and regulations as may be promulgated by the PCW to deserving entities, government agencies, and LGUs for their outstanding performance in upholding the rights of women and effective implementation of gender-responsive programs.

SEC. 43. Funding. – The initial funding requirements for the implementation of this Act shall be charged against the current appropriations of the agencies concerned. Thereafter, such sums as may be necessary for the implementation of this Act shall be included in the agencies’ yearly budgets under the General Appropriations Act.

The State shall prioritize allocation of all available resources to effectively fulfill its obligations specified under this Act. The State agencies’ GAD budgets, which shall be at least 5 percent of their total budgetary allocation, shall also be utilized for the programs and activities to implement this Act.

SEC. 44. Implementing Rules and Regulations. – As the lead agency, the PCW shall, in coordination with the CHR and all concerned government departments and agencies including, as observers, both Houses of Congress through

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the Committee on Youth, Women and Family Relations (Senate) and the Committee on Women and Gender Equality (House of Representatives) and with the participation of representatives from non-government organizations (NGOs) and civil society groups with proven track record of involvement and promotion of the rights and welfare of Filipino women and girls identified by the PCW, formulate the implementing rules and regulations (IRR) of this Act within 180 days after its effectivity.

SEC. 45. *Separability Clause.* – If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provisions not otherwise affected shall remain valid and subsisting.

SEC. 46. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 47. *Effectivity Clause.* – This Act shall take effect 15 days after its publication in at least two newspapers of general circulation.

REPUBLIC ACT No. 9775
AN ACT DEFINING THE CRIME OF CHILD PORNOGRAPHY,
PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES
Approved on November 17, 2009

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 “*Anti-Child Pornography Act of 2009.*”

SEC. 2. Declaration of Policy. – The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, emotional, psychological and social well-being. Towards this end, the State shall:

- (a) Guarantee the fundamental rights of every child from all forms of neglect, cruelty and other conditions prejudicial to his/her development;
- (b) Protect every child from all forms of exploitation and abuse including, but not limited to:
 - (1) The use of a child in pornographic performances and materials; and
 - (2) The inducement or coercion of a child to engage or be involved in pornography through whatever means; and
- (c) Comply with international treaties to which the Philippines is a signatory or a State party concerning the rights of children which include, but not limited to, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the International Labor Organization (ILO) Convention No.182 on the Elimination of the Worst Forms of Child Labor and the Convention Against Transnational Organized Crime.

SEC. 3. Definition of Terms.

- (a) *Child* refers to a person below 18 years of age or over, but is unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.
For the purpose of this Act, a child shall also refer to:
 - (1) A person regardless of age who is presented, depicted or portrayed as a child as defined herein; and
 - (2) Computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein.
- (b) *Child pornography* refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated explicit sexual activities.
- (c) *Explicit Sexual Activity* includes actual or simulated –
 - (1) Sexual intercourse or lascivious act including, but not limited to, contact involving genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex;
 - (2) Bestiality;
 - (3) Masturbation;
 - (4) Sadistic or masochistic abuse;
 - (5) Lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus; or
 - (6) Use of any object or instrument for lascivious acts.

- (d) *Internet address* refers to a website, bulletin board service, internet chat room or news group, or any other internet or shared network protocol address.
- (e) *Internet cafe or kiosk* refers to an establishment that offers or proposes to offer services to the public for the use of its computer/s or computer system for the purpose of accessing the internet, computer games or related services.
- (f) *Internet content host* refers to a person who hosts or who proposes to host internet content in the Philippines.
- (g) *Internet service provider (ISP)* refers to a person or entity that supplies or proposes to supply, an internet carriage service to the public.
- (h) *Grooming* refers to the act of preparing a child or someone who the offender believes to be a child for sexual activity or sexual relationship by communicating any form of child pornography. It includes online enticement or enticement through any other means.
- (i) *Luring* refers to the act of communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of sexual activity or production of any form of child pornography.
- (j) *Pandering* refers to the act of offering, advertising, promoting, representing or distributing through any means any material or purported material that is intended to cause another to believe that the material or purported material contains any form of child pornography, regardless of the actual content of the material or purported material.
- (k) *Person* refers to any natural or juridical entity.

Sec. 4. Unlawful or Prohibited Acts. – It shall be unlawful for any person:

- (a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;
- (b) To produce, direct, manufacture or create any form of child pornography;
- (c) To publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;
- (d) To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast: *Provided*, That possession of three or more articles of child pornography of the same form shall be *prima facie* evidence of the intent to sell, distribute, publish or broadcast;
- (e) To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts such as but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;
- (f) For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;
- (g) For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;
- (h) To engage in the luring or grooming of a child;
- (i) To engage in pandering of any form of child pornography;
- (j) To willfully access any form of child pornography;
- (k) To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and
- (l) To possess any form of child pornography.

SEC. 5. *Syndicated Child Pornography.* – The crime of child pornography is deemed committed by a syndicate if carried out by a group of three or more persons conspiring or confederating with one another and shall be punished under Section 15(a) of this Act.

SEC. 6. *Who May File a Complaint.* – Complaints on cases of any form of child pornography and other offenses punishable under this Act may be filed by the following:

- (a) Offended party;
- (b) Parents or guardians;
- (c) Ascendant or collateral relative within the third degree of consanguinity;
- (d) Officer, social worker or representative of a licensed child-caring institution;
- (e) Officer or social worker of the Department of Social Welfare and Development (DSWD);
- (f) Local social welfare development officer;
- (g) Barangay chairman;
- (h) Any law enforcement officer;
- (i) At least three concerned responsible citizens residing in the place where the violation occurred; or
- (j) Any person who has personal knowledge of the circumstances of the commission of any offense under this Act.

SEC. 7. *Appointment of Special Prosecutors.* – The Department of Justice (DOJ) shall appoint or designate special prosecutors to prosecute cases for the violation of this Act.

SEC. 8. *Jurisdiction.* – Jurisdiction over cases for the violation of this Act shall be vested in the Family Court which has territorial jurisdiction over the place where the offense or any of its essential elements was committed pursuant to Republic Act No. 8369, otherwise known as “Family Courts Act of 1997.”

SEC. 9. *Duties of an Internet Service Provider (ISP).* – All internet service providers (ISPs) shall notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) within seven days from obtaining facts and circumstances that any form of child pornography is being committed using its server or facility. Nothing in this section may be construed to require an ISP to engage in the monitoring of any user, subscriber or customer, or the content of any communication of any such person: *Provided*, That no ISP shall be held civilly liable for damages on account of any notice given in good faith in compliance with this section.

Furthermore, an ISP shall preserve such evidence for purpose of investigation and prosecution by relevant authorities.

An ISP shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an internet address which contains any form of child pornography.

All ISPs shall install available technology, program or software to ensure that access to or transmittal of any form of child pornography will be blocked or filtered.

An ISP who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 15(k) of this Act.

The National Telecommunications Commission (NTC) shall promulgate within 90 days from the effectivity of this Act the necessary rules and regulations for the implementation of this provision which shall include, among others, the installation of filtering software that will block access to or transmission of any form of child pornography.

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SEC. 10. Responsibility of Mall Owners/Operators and Owners or Lessors of Other Business Establishments. – All mall owners/operators and owners or lessors of other business establishments shall notify the PNP or the NBI within seven days from obtaining facts and circumstances that child pornography is being committed in their premises: *Provided*, That public display of any form of child pornography within their premises is a conclusive presumption of the knowledge of the mall owners/operators and owners or lessors of other business establishments of the violation of this Act: *Provided, further*, That a disputable presumption of knowledge by mall owners/operators and owners or lessors of other business establishments should know or reasonably know that a violation of this Act is being committed in their premises.

Photo developers, information technology professionals, credit card companies and banks and any person who has direct knowledge of any form of child pornography activities shall have the duty to report any suspected child pornography materials or transactions to the proper authorities within seven days from discovery thereof.

Any willful and intentional violation of this provision shall be subject to the penalty provided under Section 15(l) of this Act.

SEC. 11. Duties of an Internet Content Host. – An internet content host shall:

- (a) Not host any form of child pornography on its internet address;
- (b) Within seven days, report the presence of any form of child pornography, as well as the particulars of the person maintaining, hosting, distributing or in any manner contributing to such internet address, to the proper authorities; and
- (c) Preserve such evidence for purposes of investigation and prosecution by relevant authorities.

An internet content host shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an internet address that contains any form of child pornography.

An internet content host who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 15(j) of this Act: *Provided*, That the failure of the internet content host to remove any form of child pornography within 48 hours from receiving the notice that any form of child pornography is hitting its server shall be conclusive evidence of willful and intentional violation thereof.

SEC. 12. Authority to Regulate Internet Café or Kiosk. – The local government unit (LGU) of the city or municipality where an internet café or kiosk is located shall have the authority to monitor and regulate the establishment and operation of the same or similar establishments in order to prevent violation of the provisions of this Act.

SEC. 13. Confidentiality. – The right to privacy of the child shall be ensured at any stage of the investigation, prosecution and trial of an offense under this Act. Towards this end, the following rules shall be observed:

- (a) The judge, prosecutor or any officer of the law to whom the complaint has been referred to may, whenever necessary to ensure a fair and impartial proceeding and after considering all circumstances for the best interest of the child conduct a closed-door investigation, prosecution or trial;
- (b) The name and personal circumstances of the child, including the child's immediate family, or any other information tending to establish his/her identity shall not be disclosed to the public;
- (c) Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall be released only to the following:
 - (1) Members of the court staff for administrative use;
 - (2) The prosecuting attorney;
 - (3) Defense counsel;
 - (4) The guardian *ad litem*;
 - (5) Agents of investigating law enforcement agencies; and

- (6) Other persons as determined by the court.
- (d) Any form of child pornography that is part of the court records shall be subject to a protective order that provides as follows:
 - (1) Any form of child pornography may be viewed only by the parties, their counsel, their expert witness and guardian *ad litem*;
 - (2) Neither form of child pornography nor any portion thereof shall be divulged to any other person, except as necessary for investigation, prosecution or trial; and
 - (3) No person shall be granted access to any form of child pornography or any part thereof unless he/she signs a written affirmation that he/she has received and read a copy of the protection order; that he/she submits to the jurisdiction of the court with respect to the protective order; and that, in case of violation thereof, he/she will be subject to the contempt power of the court; and
- (e) In cases when prosecution or trial is conducted behind closed doors, it shall be unlawful for any editor, publisher and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing the tri-media facilities or information technology to publish or broadcast the names of the victims of any case of child pornography.

Any violation of this provision shall be subject to the penalty provided for under Section 15(m) of this Act.

SEC. 14. Care, Custody and Treatment of a Child Victim. – The DSWD shall ensure that the child who is a victim of any form of child pornography is provided appropriate care, custody and support for their recovery and reintegration in accordance with existing laws.

The child and his family shall be entitled to protection as well as to the rights and benefits of witnesses under Republic Act No. 6981, otherwise known as “The Witness Protection, Security and Benefit Act.”

The child shall also be considered as a victim of a violent crime defined under Section 3(d) of Republic Act No. 7309, otherwise known as “An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes”, so that the child may claim compensation therein.

Sec. 15. Penalties and Sanctions. – The following penalties and sanctions are hereby established for offenses enumerated in this Act:

- (a) Any person found guilty of syndicated child pornography as defined in Section 5 of this Act shall suffer the penalty of *reclusion perpetua* and a fine of not less than Two Million Pesos (P2 million) but not more than Five Million Pesos (P5 million);
- (b) Any person found guilty of violating Section 4(a), (b) and (c) of this Act shall suffer the penalty of *reclusion temporal* in its maximum period and a fine of not less than One Million Pesos (P1 million) but not more than Two Million Pesos (P2 million);
- (c) Any person found guilty of violating Section 4(d), (e) and (f) of this Act shall suffer the penalty of *reclusion temporal* in its medium period and a fine of not less than Seven Hundred Fifty Thousand Pesos (P750,000) but not more than One Million Pesos (P1 million);
- (d) Any person found guilty of violating Section 4(g) of this Act shall suffer the penalty of *reclusion temporal* in its minimum period and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than Seven Hundred Thousand Pesos (P700,000);
- (e) Any person found guilty of violating Section 4(h) of this Act shall suffer the penalty of *prision mayor* in its maximum period and a fine of not less than Three Hundred Thousand Pesos (P300,000) but not more than Five Hundred Thousand Pesos (P500,000);

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- (f) Any person found guilty of violating Section 4(i) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine of not less than Three Hundred Thousand Pesos (P300,000) but not more than Five Hundred Thousand Pesos (P500,000);
- (g) Any person found guilty of violating Section 4(j) of this Act shall suffer the penalty of *prision correccional* in its maximum period and a fine of not less than Two Hundred Thousand Pesos (P200,000) but not more than Three Hundred Thousand Pesos (P300,000);
- (h) Any person found guilty of violating Section 4(k) of this Act shall suffer the penalty of *prision correccional* in its medium period and a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than Two Hundred Fifty Thousand Pesos (P250,000);
- (i) Any person found guilty of violating Section 4(l) of this Act shall suffer the penalty of *arresto mayor* in its minimum period and a fine of not less than Fifty Thousand Pesos (P50,000) but not more than One Hundred Thousand Pesos (P100,000);
- (j) Any person found guilty of violating Section 11 of this Act shall suffer the penalty of *prision correccional* in its medium period and a fine of not less than One Million Pesos (P1 million) but not more than Two Million Pesos (P2 million) for the first offense. In the case of a subsequent offense, the penalty shall be a fine not less than Two Million Pesos (P2 million) but not more than Three Million Pesos (P3 million) and revocation of its license to operate and immediate closure of the establishment;
- (k) Any ISP found guilty of willfully and knowingly failing to comply with the notice and installation requirements under Section 9 of this Act shall suffer the penalty of a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million) for the first offense. In case of subsequent offense, the penalty shall be a fine of not less than One Million Pesos (P1 million) but not more than Two Million Pesos (P2 million) and revocation of its license to operate;
- (l) Any mall owner-operator and owner or lessor of other business establishments including photo developers, information technology professionals, credit card companies and banks, found guilty of willfully and knowingly failing to comply with the notice requirements under Section 10 of this Act shall suffer the penalty of a fine of not less than One Million Pesos (P1 million) but not more than Two Million Pesos (P2 million) for the first offense. In the case of a subsequent offense, the penalty shall be a fine of not less than Two Million Pesos (P2 million) but not more than Three Million Pesos (P3 million) and revocation of its license to operate and immediate closure of the establishment; and
- (m) Any person found guilty of violating Section 13 of this Act shall suffer the penalty of *arresto mayor* in its minimum period and a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than Three Hundred Thousand Pesos (P300,000).

SEC. 16. Common Penal Provisions.

- (a) If the offender is a parent, ascendant, guardian, step-parent or collateral relative within the third degree of consanguinity or affinity or any person having control or moral ascendancy over the child, the penalty provided herein shall be in its maximum duration; *Provided*, That this provision shall not apply to Section 4(g) of this Act;
- (b) If the offender is a juridical person, the penalty shall be imposed upon the owner, manager, partner, member of the board of directors and/or any responsible officer who participated in the commission of the crime or shall have knowingly permitted or failed to prevent its commissions;
- (c) If the offender is a foreigner, he/she shall be immediately deported after the complete service of his/her sentence and shall forever be barred from entering the country; and
- (d) The penalty provided for in this Act shall be imposed in its maximum duration if the offender is a public officer or employee.

SEC. 17. Confiscation and Forfeiture of the Proceeds, Tools and Instruments Used in Child Pornography. – In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture in favor of the government of all the proceeds, tools and instruments used in the commission of the crime, unless they are the property of a third person not liable for the unlawful act; *Provided*, however, That all awards for damages shall be taken from the personal and separate properties of the offender; *Provided*, further, That if such properties are insufficient, the deficiency shall be taken from the confiscated and forfeited proceeds, tools and instruments.

All proceeds derived from the sale of properties used for the commission of any form of child pornography shall accrue to the special account of the DSWD which shall be used exclusively for the implementation of this Act.

When the proceeds, tools and instruments used in the commission of the offense have been destroyed diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, tools and instruments used in the commission of the offense.

SEC. 18. Mandatory Services to Victims of Child Pornography. – To ensure recovery, rehabilitation and reintegration into the mainstream of society concerned government agencies and the LGUs shall make available the following services to victims of any form of child pornography:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services, which shall include information about the victim's rights and the procedure for filing of complaints, claims for compensation and such other legal remedies available to them in a language understood by the child;
- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance.

Sustained supervision and follow through mechanism that will track the progress of recovery, rehabilitation and reintegration of the child victims shall be adopted and carried out.

SEC. 19. Programs for Victims of Child Pornography. – The Inter-Agency Council Against Child Pornography created under Section 20 of this Act shall develop and implement the necessary programs that will prevent any form of child pornography, as well as protect, heal and reintegrate the child into the mainstream of society. Such programs shall include, but not limited to the following:

- (a) Provision of mandatory services including counseling free legal services, medical or psychological services, livelihood and skills training and educational assistance to the child pursuant to Section 18 of this Act;
- (b) Sponsorship of a national research program on any form of child pornography and other acts covered by the law and the establishment of a data collection system for monitoring and evaluation purposes;
- (c) Provision of necessary technical and material support services to appropriate government agencies and nongovernmental organizations;
- (d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, nongovernmental and international organizations; and
- (e) Promotion of information and education campaign.

SEC. 20. Inter - Agency Council Against Child Pornography. – There is hereby established an Inter-Agency Council Against Child Pornography to be composed of the Secretary of the DSWD as chairperson and the following as members:

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- (a) Secretary of the Department of Justice;
- (b) Secretary of the Department of Labor and Employment
- (c) Secretary of the Department of Science and Technology
- (d) Chief of the Philippine National Police;
- (e) Chairperson of the Commission on Human Rights;
- (f) Chairperson of the Commission on Information and Communications Technology;
- (g) Commissioner of the National Telecommunications Commission;
- (h) Executive Director of the Council for the Welfare of Children;
- (i) Executive Director of the Philippine Center for Transnational Crimes;
- (j) Executive Director of the Optical Media Board;
- (k) Director of the National Bureau of Investigation; and
- (l) Three representatives from children's non-governmental organizations. These representatives shall be nominated by the government agency representatives of the Council for appointment by the President for a term of three years and may be renewed upon renomination and reappointment by the Council and the President, respectively.

The members of the Council may designate their permanent representatives, who shall have a rank not lower than assistant secretary or its equivalent, to meetings and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

The DSWD shall establish the necessary Secretariat for the Council.

Sec. 21. Functions of the Council. – The Council shall have the following powers and functions:

- (a) Formulate comprehensive and integrated plans and programs to prevent and suppress any form of child pornography;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to child pornography;
- (e) Conduct and coordinate massive information disseminations and campaign on the existence of the law and the various issues and problems attendant to child pornography;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on the action taken;
- (g) Assist in the filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- (h) Formulate a program for the reintegration of victims of child pornography;
- (i) Secure from any department, bureau, office, agency or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
- (j) Complement the shared government information system relative to child abuse and exploitation and ensure that the proper agencies conduct a continuing research and study on the patterns and schemes of any form of child pornography which form the basis for policy formulation and program direction;
- (k) Develop the mechanism to ensure the timely, coordinated and effective response to cases of child pornography;

- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress any form of child pornography;
- (m) Adopt measures and policies to protect the rights and needs of the victims of child pornography who are foreign nationals in the Philippines;
- (n) Maintain a database of cases of child pornography;
- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to victims of child pornography.
- (p) Submit to the President and the Congressional Oversight Committee credited herein the annual report on the policies, plans, programs and activities of the Council relative to the implementation of this Act; and
- (q) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

SEC. 22. Child Pornography as a Transnational Crime. – Pursuant to the Convention on Transnational Organized Crime, the DOJ may execute the request of a foreign state for assistance in the investigation or prosecution of any form of child pornography by: (1) conducting a preliminary investigation against the offender and, if appropriate, to file the necessary charges in court; (2) giving information needed by the foreign state; and (3) to apply for an order of forfeiture of any proceeds or monetary instrument or property located in the Philippines used in connection with child pornography in the court; *Provided*, That if the DOJ refuses to act on the request of for delaying the execution thereof: *Provided*, further, That the principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.

SEC. 23. Extradition. – The DOJ, in consultation with the Department of Foreign Affairs (DFA), shall endeavor to include child pornography among extraditable offenses in future treaties.

SEC. 24. Congressional Oversight Committee. – There is hereby created a Congressional Oversight Committee composed of five members from the Senate and five members from the House of Representatives. The members from the Senate shall be appointed by the Senate President based on the proportional representation of the parties or coalition therein with at least one member representing the Minority. The members from the House of Representative shall be appointed by the Speaker, also based on proportional representation of the parties or coalitions therein, with the Chair of the House of Committee on Welfare of Children and at least one member representing the Minority.

The Committee shall be headed by the respective Chairs of the Senate Committee on Youth, Women and Family Relations and the House of Representatives Committee on Justice. The Secretariat of the Congressional Oversight Committee shall come from the existing Secretariat personnel of the Committees of the Senate and the House of Representatives concerned.

The Committee shall monitor and ensure the effective implementation of this Act, determine inherent weakness and loopholes in the law, recommend the necessary remedial legislation or administrative measures and perform such other duties and functions as may be necessary to attain the objectives of this Act.

SEC. 25. Appropriations. – The amount necessary to implement the provisions of the Anti-Child Pornography Act and the operationalization of the Inter-Agency Council Against Child Pornography shall be included in the annual General Appropriations Act.

SEC. 26. Implementing Rules and Regulations. – The Inter- Agency Council Against Child Pornography shall promulgate the necessary implementing rules and regulations within 90 days from the effectivity of this Act.

SEC. 27. Suppletory Application of the Revised Penal Code. – The Revised Penal Code shall be suppletorily applicable to this Act.

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SEC. 28. *Separability Clause.* – If any part of this Act is declared unconstitutional or invalid, the other provisions not affected thereby shall continue to be in full force and effect.

SEC. 29. *Repealing Clause.* – All laws, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SEC. 30. *Effectivity.* – This Act shall effect after 15 days following its complete publication in the Official Gazette or in at least two newspapers of general circulation.

REPUBLIC ACT No. 9851
AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW,
GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION,
DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES
Approved on December 11, 2009

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

CHAPTER I
INTRODUCTORY PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “*Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity.*”

SEC. 2. *Declaration of Principles and State Policies.*

- (a) The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom, cooperation and amity with all nations.
- (b) The state values the dignity of every human person and guarantees full respect for human rights, including the rights of indigenous cultural communities and other vulnerable groups, such as women and children;
- (c) It shall be the responsibility of the State and all other sectors concerned to resolve armed conflict in order to promote the goal of “Children as Zones of Peace”;
- (d) The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law our nation;
- (e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;
- (f) The State shall guarantee persons suspected or accused of having committed grave crimes under international law all rights necessary to ensure that their trial will be fair and prompt in strict accordance with national and international law and standards for fair trial. It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families. It shall ensure that the legal systems in place provide accessible and gender-sensitive avenues of redress for victims of armed conflict; and
- (g) The State recognizes that the application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

CHAPTER II
DEFINITION OF TERMS

SECTION 3. For purposes of this Act, the term:

- (a) "Apartheid" means inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group or groups and committed with the intention of maintaining that regime.
- (b) "Arbitrary deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under domestic or international law.
- (c) "Armed conflict" means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State: *Provided*, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of August 12, 1949, including their common Article 3, apply. Armed conflict may be international, that is, between two or more States, including belligerent occupation; or non-international, that is, between governmental authorities and organized armed groups or between such groups within a state. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (d) "Armed forces" means all organized armed forces, groups and units that belong to a party to an armed conflict which are under a command responsible to that party for the conduct of its subordinates. Such armed forces shall be subject to an internal disciplinary system which enforces compliance with International Humanitarian Law.
- (e) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in Section 6 of this Act against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.
- (f) "Effective command and control" or "effective authority and control" means having the material ability to prevent and punish the commission of offenses by subordinates.
- (g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.
- (h) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.
- (i) "Extermination" means the international infliction of conditions of life, *inter alia*, the deprivation of access to food and medicine, calculated to bring about the destruction of a part of a population.
- (j) "Forced pregnancy" means the unlawful confinement of a women to be forcibly made pregnant, with the intent of affecting the ethnic composition of any population carrying out other grave violations of international law.
- (k) "*Hors de Combat*" means a person who:
 - (1) is in the power of an adverse party;
 - (2) has clearly expressed an intention to surrender; or

- (3) has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself: Provided, that in any of these cases, the person form any hostile act and does not attempt to escape.
- (l) "Military necessity" means the necessity of employing measures which are indispensable to achieve a legitimate aim of the conflict and are not otherwise prohibited by International Humanitarian Law.
- (m) "Non-defended locality" means a locality that fulfills the following conditions:
- (1) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
 - (2) no hostile use of fixed military installations or establishments must have been made;
 - (3) no acts of hostility must have been committed by the authorities or by the population; and
 - (4) no activities in support of military operations, must have been undertaken.
- (n) "No quarter will be given" means refusing to spare the life of anybody, even of persons manifestly unable to defend themselves or who clearly express their intention to surrender.
- (o) "Perfidy" means acts which invite the confidence of an adversary to lead him/her to believe he/she is entitled to, or is obliged to accord, protection under the rules of International Humanitarian Law, with the intent to betray that confidence, including but not limited to:
- (1) feigning an intent to negotiate under a flag of truce;
 - (2) feigning surrender;
 - (3) feigning incapacitation by wounds or sickness;
 - (4) feigning civilian or noncombatant status; and
 - (5) feigning protective status by use of signs, emblems or uniforms of the United Nations or of a neutral or other State not party to the conflict.
- (p) "Persecution" means the international and severe deprivation of fundamental rights contrary to international law by reason of identity of the group or collectivity.
- (q) "Protected person" in an armed conflict means:
- (1) a person wounded, sick or shipwrecked, whether civilian or military;
 - (2) a prisoner of war or any person deprived of liberty for reasons related to an armed conflict;
 - (3) a civilian or any person not taking a direct part or having ceased to take part in the hostilities in the power of the adverse party;
 - (4) a person who, before the beginning of hostilities, was considered a stateless person or refugee under the relevant international instruments accepted by the parties to the conflict concerned or under the national legislation of the state of refuge or state of residence;
 - (5) a member of the medical personnel assigned exclusively to medical purposes or to the administration of medical units or to the operation of or administration of medical transports; or
 - (6) a member of the religious personnel who is exclusively engaged in the work of their ministry and attached to the armed forces of a party to the conflict, its medical units or medical transports, or non-denominational, noncombatant military personnel carrying out functions similar to religious personnel.
- (r) "Superior" means:
- (1) a military commander or a person effectively acting as a military commander; or
 - (2) any other superior, in as much as the crimes arose from activities within the effective authority and control of that superior.

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- (s) "Torture" means the intentional infliction of severe pain or suffering, whether physical, mental, or psychological, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.
- (t) "Works and installations containing dangerous forces" means works and installations the attack of which may cause the release of dangerous forces and consequent severe losses among the civilian population, namely: dams, dikes, and nuclear, electrical generation stations.

CHAPTER III

CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY

SECTION 4. War Crimes. – For the purpose of this Act, "war crimes" or "crimes against International Humanitarian Law" means:

- (a) In case of an international armed conflict, grave breaches of the Geneva Conventions of August 12, 1949, namely, any of the following acts against persons or property protected under provisions of the relevant Geneva Convention:
 - (1) Willful killing;
 - (2) Torture or inhuman treatment, including biological experiments;
 - (3) Willfully causing great suffering, or serious injury to body or health;
 - (4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
 - (5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (6) Arbitrary deportation or forcible transfer of population or unlawful confinement;
 - (7) Taking of hostages;
 - (8) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power; and
 - (9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.
- (b) In case of a non-international armed conflict, serious violations of common Article 3 to the four Geneva Conventions of August 12, 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause;
 - (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
 - (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - (3) Taking of hostages; and
 - (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:
 - (1) Internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (2) Intentionally directing attacks against civilian objects, that is, object which are not military objectives;

- (3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with intentional law;
- (4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;
- (6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health;
- (7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;
- (8) Killing or wounding a person in the knowledge that he/she is *hors de combat*, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;
- (9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;
- (10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;
- (11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;
- (12) Killing, wounding or capturing an adversary by resort to perfidy;
- (13) Declaring that no quarter will be given;
- (14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;
- (15) Pillaging a town or place, even when taken by assault;
- (16) Ordering the displacements of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatments;

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- (19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;
- (20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;
- (22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (24) Committing any of the following acts:
 - (i) Conscripting, enlisting or recruiting children under the age of 15 years into the national armed forces;
 - (ii) Conscripting, enlisting or recruiting children under the age of 18 years into an armed force or group other than the national armed forces; and
 - (iii) Using children under the age of 18 years to participate actively in hostilities; and
- (25) Employing means of warfare which are prohibited under international law, such as:
 - (i) Poison or poisoned weapons;
 - (ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and
 - (iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

Sec. 5. Genocide.

- (a) For the purpose of this Act, "genocide" means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such:
 - (1) Killing members of the group;
 - (2) Causing serious bodily or mental harm to members of the group;
 - (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (4) Imposing measures intended to prevent births within the group; and
 - (5) Forcibly transferring children of the group to another group.
- (b) It shall be unlawful for any person to directly and publicly incite others to commit genocide.

Any person found guilty of committing any of the acts specified in paragraphs (a) and (b) of this section shall suffer the penalty provided under Section 7 of this Act.

SEC. 6. Other Crimes Against Humanity. – For the purpose of this act, “other crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Willful killing;
- (b) Extermination;
- (c) Enslavement;
- (d) Arbitrary deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
- (i) Enforced or involuntary disappearance of persons;
- (j) Apartheid; and
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

CHAPTER IV PENAL PROVISIONS

SECTION 7. Penalties. – Any person found guilty of committing any of the acts provided under Sections 4, 5 and 6 of this Act shall suffer the penalty of *reclusion temporal* in its medium to maximum period and a fine ranging from One Hundred Thousand Pesos (P100,000) to Five Hundred Thousand Pesos (P500,000).

When justified by the extreme gravity of the crime, especially where the commission of any of the crimes specified herein results in death or serious physical injury, or constitutes rape, and considering the individual circumstances of the accused, the penalty of *reclusion perpetua* and a fine ranging from Five Hundred Thousand Pesos (P500,000) to One Million Pesos (P1 million) shall be imposed.

Any person found guilty of inciting others to commit genocide referred to in Section 5(b) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine ranging from Ten Thousand Pesos (P10,000) to Twenty Thousand Pesos (P20,000).

In addition, the court shall order the forfeiture of proceeds, property and assets derived, directly or indirectly, from that crime, without prejudice to the rights of *bona fide* third parties. The court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer.

CHAPTER V
SOME PRINCIPLES OF CRIMINAL LIABILITY

SECTION 8. *Individual Criminal Responsibility.*

- (a) In addition to existing provisions in Philippine law on principles of criminal responsibility, a person shall be criminally liable as principal for a crime defined and penalized in this Act if he/she:
- (1) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (2) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (3) In any other way contributes to the commission or attempted commission of such a crime by a group of person acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime defined in this Act; or
 - (ii) be made in the knowledge of the intention of the group to commit the crime.
- (b) A person shall be criminally liable as accomplice for facilitating the commission of a crime defined and penalized in this Act if he/she aids, abets or otherwise assists in its commission or attempted commission, including providing the means for its commission.
- (c) A person shall be criminally liable for a crime defined and penalized in this Act if he/she attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intention. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Act for the attempt to commit the same if he/she completely and voluntarily gave up the criminal purpose.

SEC. 9. *Irrelevance of Official Capacity.* – This Act shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. However:

- (a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising jurisdiction over such a person; and
- (b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law.

SEC. 10. *Responsibility of Superiors.* – In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

- (a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;
- (b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

SEC. 11. *Non-prescription.* – The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.

Sec. 12. *Orders from a Superior.* – The fact that a crime defined and penalized under this Act has been committed by a person pursuant to an order of a government or a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless all of the following elements concur:

- (a) The person was under a legal obligation to obey orders of the government or the superior in question;
- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

For the purposes of this section, orders to commit genocide or other crimes against humanity are manifestly unlawful.

CHAPTER VI PROTECTION OF VICTIMS AND WITNESSES

SECTION 13. *Protection of Victims and Witnesses.* – In addition to existing provisions in Philippine law for the protection of victims and witnesses, the following measures shall be undertaken:

- (a) The Philippine court shall take appropriate measures to protect the safety, physical and physiological well-being, dignity and privacy of victims and witnesses. In so doing, the court shall have regard of all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial;
- (b) As an exception to the general principle of public hearings, the court may, to protect the victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of the victim of sexual violence or a child who is a victim or is a witness, unless otherwise ordered by the court, having regard to all the circumstances, particularly the views of the victim or witness;
- (c) Where the personal interests of the victims are affected, the court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court in manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the court considers it appropriate in accordance with the established rules of procedure and evidence; and
- (d) Where the disclosure of evidence or information pursuant to this Act may lead to the grave endangerment of the security of a witness for his/her family, the prosecution may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial.

SEC. 14. *Reparations to Victims.* – In addition to existing provisions in Philippine law and procedural rules for reparations to victims, the following measures shall be undertaken:

- (a) The court shall follow the principles relating to the reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision, the court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and state the principles on which it is acting;
- (b) The court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation; and

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- (c) Before making an order under this section, the court may invite and shall take account of representations from or on behalf of the convicted person, victims or other interested persons.

Nothing in this section shall be interpreted as prejudicing the rights of victims under national or international law.

CHAPTER VII

APPLICABILITY OF INTERNATIONAL LAW AND OTHER LAWS

SECTION 15. *Applicability of International Law.* – In the application and interpretation of this Act, Philippine courts shall be guided by the following sources:

- (a) The 1948 Genocide Convention;
- (b) The 1949 Geneva Conventions I–IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;
- (c) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;
- (d) The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;
- (e) The rules and principles of customary international law;
- (f) The judicial decisions of international courts and tribunals;
- (g) Relevant and applicable international human rights instruments;
- (h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
- (i) Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.

SEC. 16. *Supplementary Application of the Revised Penal Code and Other General or Special Laws.* – The provisions of the Revised Penal Code and other general or special laws shall have a supplementary application to the provisions of this Act.

CHAPTER VIII

JURISDICTION

SECTION 17. *Jurisdiction.* – The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

- (a) The accused is a Filipino citizen;
- (b) The accused, regardless of citizenship or residence, is present in the Philippines; or
- (c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.

SEC. 18. *Philippine Courts, Prosecutors and Investigators.* – The Regional Trial Courts of the Philippines shall have original and exclusive jurisdiction over the crimes punishable under this Act. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court as provided by law.

The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors or investigators as the case may be.

The State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive effective training in human rights, International Humanitarian Law and International Criminal Law.

CHAPTER IX FINAL PROVISIONS

SECTION 19. *Separability Clause.* – If, for any reason or reasons, any part or provision of this Statute shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 20. *Repealing Clause.* – All laws, presidential decrees and issuances, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Statute are hereby repealed or modified accordingly.

SEC. 21. *Effectivity.* – This Act shall take effect 15 days after its complete publication in the *Official Gazette* or in two newspapers general circulation.

REPUBLIC ACT No. 9858

**AN ACT PROVIDING FOR THE LEGITIMATION OF CHILDREN BORN TO PARENTS BELOW MARRYING AGE,
AMENDING FOR THE PURPOSE THE FAMILY CODE OF THE PHILIPPINES, AS AMENDED**

Approved on December 20, 2009

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

SECTION 1. Article 177 of Executive Order No. 209, otherwise known as the “Family Code of the Philippines,” as amended, is hereby further amended to read as follows:

ART. 177. Children conceived and born outside of wedlock of parents who, at the time of conception of the former, were not disqualified by any impediment to marry each other, or were so disqualified only because either or both of them were below eighteen (18) years of age, may be legitimated.

ART. 178. Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation.

SEC. 2. *Implementing Rules.* – The Civil Registrar General shall, in consultation with the chairpersons of the Committee on Revision of Laws of the House of Representatives and the Committee on Youth, Women and Family Relations of the Senate, the Council for the Welfare of Children, the Department of Justice (DOJ), the Department of Foreign Affairs (DFA), the Office of the Supreme Court Administrator, the Philippine Association of Civil Registrars (PACR) and the UP Law Center, issue the necessary rules/regulations for the effective implementation of this Act not later than one month from its effectivity.

SEC. 3. *Repealing Clause.* – All laws, presidential decrees, executive orders, proclamations and/or administrative regulations which are inconsistent with the provisions of this Act are hereby amended, modified, superseded or repealed accordingly.

SEC. 4. *Effectivity Clause.* – This Act shall take effect 15 days after its complete publication in the Official Gazette or in at least two newspapers of national circulation.

REPUBLIC ACT No. 9995
AN ACT DEFINING AND PENALIZING THE CRIME OF PHOTO AND VIDEO VOYEURISM,
PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

Approved on February 15, 2010

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 “*Anti-Photo and Video Voyeurism Act of 2009.*”

SEC. 2. Declaration of Policy. – The State values the dignity and privacy of every human person and guarantees full respect for human rights. Toward this end, the State shall penalize acts that would destroy the honor, dignity and integrity of a person.

SEC. 3. Definition of Terms. – For purposes of this Act, the term:

- (a) *Broadcast* means to make public, by any means, a visual image with the intent that it be viewed by a person or persons.
- (b) *Capture* with respect to an image, means to videotape, photograph, film, record by any means, or broadcast.
- (c) *Female breast* means any portion of the female breast.
- (d) *Photo or video voyeurism* means the act of taking photo or video coverage of a person or group of persons performing sexual act or any similar activity or of capturing an image of the private area of a person or persons without the latter’s consent, under circumstances in which such person/s has/have a reasonable expectation of privacy, or the act of selling, copying, reproducing, broadcasting, sharing, showing or exhibiting the photo or video coverage or recordings of such sexual act or similar activity through VCD/DVD, internet, cellular phones and similar means or device without the written consent of the person/s involved, notwithstanding that consent to record or take photo or video coverage of same was given by such person/s.
- (e) *Private area of a person* means the naked or undergarment clad genitals, pubic area, buttocks or female breast of an individual.
- (f) *Under circumstances in which a person has a reasonable expectation of privacy* means believe that he/she could disrobe in privacy, without being concerned that an image or a private area of the person was being captured; or circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public, regardless of whether that person is in a public or private place.

SEC. 4. Prohibited Acts. – It is hereby prohibited and declared unlawful for any person:

- (a) To take photo or video coverage of a person or group of persons performing sexual act or any similar activity or to capture an image of the private area of a person/s such as the naked or undergarment clad genitals, public area, buttocks or female breast without the consent of the person/s involved and under circumstances in which the person/s has/have a reasonable expectation of privacy;
- (b) To copy or reproduce, or to cause to be copied or reproduced, such photo or video or recording of sexual act or any similar activity with or without consideration;
- (c) To sell or distribute, or cause to be sold or distributed, such photo or video or recording of sexual act, whether it be the original copy or reproduction thereof; or
- (d) To publish or broadcast, or cause to be published or broadcast, whether in print or broadcast media, or show or exhibit the photo or video coverage or recordings of such sexual act or any similar activity through VCD/DVD, internet, cellular phones and other similar means or device.

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The prohibition under paragraphs (b), (c) and (d) shall apply notwithstanding that consent to record or take photo or video coverage of the same was given by such person/s. Any person who violates this provision shall be liable for photo or video voyeurism as defined herein.

SEC. 5. Penalties. – The penalty of imprisonment of not less than three years but not more than seven years and a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than Five Hundred Thousand Pesos (P500,000), or both, at the discretion of the court shall be imposed upon any person found guilty of violating Section 4 of this Act.

If the violator is a juridical person, its license or franchise shall be automatically be deemed revoked and the persons liable shall be the officers thereof including the editor and reporter in the case of print media, and the station manager, editor and broadcaster in the case of a broadcast media.

If the offender is a public officer or employee, or a professional, he/she shall be administratively liable.

If the offender is an alien, he/she shall be subject to deportation proceedings after serving his/her sentence and payment of fines.

SEC. 6. Exemption. – Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the court, to use the record or any copy thereof as evidence in any civil, criminal investigation or trial of the crime of photo or video voyeurism: *Provided*, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he/she may produce, and upon showing that there are reasonable grounds to believe that photo or video voyeurism has been committed or is about to be committed, and that the evidence to be obtained is essential to the conviction of any person for, or to the solution or prevention of such crime.

SEC. 7. Inadmissibility of Evidence. – Any record, photo or video, or copy thereof, obtained or secured by any person in violation of the preceding sections shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

SEC. 8. Separability Clause. – If any provision or part hereof is held invalid or unconstitutional, the remaining provisions not affected thereby shall remain valid and subsisting.

SEC. 9. Repealing Clause. – Any law, presidential decree or issuance, executive order, letter of instruction , administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 10. Effectivity Clause. – This Act shall take effect 15 days after its complete publication in the Official Gazette or in two newspapers of general circulation.

REPUBLIC ACT No. 10022

AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES

Approved on March 8, 2010

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

SECTION 1. Paragraphs (a), (e), (g) and (h) of Section 2 of Republic Act No. 8042 (RA No. 8042), as amended, otherwise known as the *Migrant Workers and Overseas Filipinos Act of 1995*, is hereby amended to read as follows:

- (a) In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular, continuously monitor international conventions, adopt/be signatory to and ratify those that guarantee protection to our migrant workers, and endeavor to enter into bilateral agreements with countries hosting overseas Filipino workers.
- (e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/documented or irregular/undocumented, are adequately protected and safeguarded.
- (g) The State recognizes that the most effective tool for empowerment is the possession of skills by migrant workers. The government shall provide them free and accessible skills development and enhancement programs. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers.
- (h) The State recognizes non-governmental organizations (NGOs), trade unions, workers associations, stakeholders and their similar entities duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. The significant contribution of recruitment and manning agencies shall from part this partnership.

SEC. 2. Section 3, paragraph (a) of RA No. 8042, as amended, is hereby amended to read as follows:

- (a) *Overseas Filipino Worker* refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker.

SEC. 3. Section 4 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 4. *Deployment of Migrant Workers.* – The State shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of workers, including migrant workers;
- (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and
- (c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers:

Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof.

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In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination of the migrant workers, no permit for deployment shall be issued by the Philippine Overseas Employment Administration (POEA).

The members of the POEA Governing Board who actually voted in favor of an order allowing the deployment of migrant workers without any of the aforementioned guarantees shall suffer the penalties of removal or dismissal from service with disqualification to hold any appointive public office for five years. Further, the government official or employee responsible for the issuance of the permit or for allowing the deployment of migrant workers in violation of this section and in direct contravention of an order by the POEA Governing Board prohibiting deployment shall be meted the same penalties in this section.

For this purpose, the Department of Foreign Affairs (DFA), through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country's labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers.

The State shall also allow the deployment of overseas Filipino workers to vessels navigating the foreign seas or to installations located offshore or on high seas whose owners/employers are compliant with international laws and standards that protect the rights of migrant workers.

The State shall likewise allow the deployment of overseas Filipino workers to companies and contractors with international operations: *Provided*, That they are compliant with standards, conditions and requirements, as embodied in the employment contracts prescribed by the POEA and in accordance with internationally-accepted standards.

SEC. 4. Section 5 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 5. *Termination or Ban on Deployment.* – Notwithstanding the provisions of Section 4 hereof, in pursuit of the national interest or when public welfare so requires, the POEA Governing Board, after consultation with the DFA, may, at any time, terminate or impose a ban on the deployment of migrant workers.

SEC. 5. Section 6 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

SEC. 6. *Definition.* – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;
- (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- (e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

- (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
- (h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
- (i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment (DOLE) from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE;
- (j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of travel agency;
- (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations;
- (l) Failure to actually deploy a contracted worker without valid reason as determined by the DOLE;
- (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage; and
- (n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three or more persons individually or as a group.

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

- (1) Grant a loan to an overseas Filipino worker with interest exceeding 8 percent *per annum*, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;
- (2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;
- (3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own;
- (4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;
- (5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;
- (6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and
- (7) For a recruitment/manning agency or a foreign principal/employer to pass on the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate

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the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the DOLE, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice (DOJ) shall collaborate with the anti-illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations.

Sec. 6. Section 7 of RA No. 8042, as amended, is hereby amended to read as follows:

Sec. 7. Penalties.

- (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than 12 years and one day but not more than 20 years and a fine of not less than One Million Pesos (P1 million) nor more than Two Million Pesos (P2 million)
- (b) The penalty of life imprisonment and a fine of not less than Two Million Pesos (P2 million) nor more than Five Million Pesos (P5 million) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein
Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than 18 years of age or committed by a non-licensee or non-holder of authority.
- (c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six years and one day but not more than 12 years and a fine of not less than Five Hundred Thousand Pesos (P500,000) nor more than One Million Pesos (P1 million).

If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic.

Sec. 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

Sec. 10. Money Claims. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within 90 calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within 30 days from approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at 12 percent *per annum*, plus his salaries for the unexpired portion of his employment contract or for three months for every year of the unexpired term, whichever is less.

In case of a final and executory judgement against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgement award.

Noncompliance with the mandatory periods for resolutions of case provided under this section shall subject the responsible officials to any or all of the following penalties:

- (a) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;
- (b) Suspension for not more than 90 days; or
- (c) Dismissal from the service with disqualification to hold any appointive public office for five years.

Provided, however, That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.

SEC. 8. The first paragraph of Section 13 of RA No. 8042, as amended is hereby amended to read as follows:

SEC. 13. *Free Legal Assistance; Preferential Entitlement Under the Witness Protection Program.* – A mechanism for free legal assistance for victims of illegal recruitment shall be established in the anti-illegal recruitment branch of the POEA including its regional offices. Such mechanism shall include coordination and cooperation with the DOJ, the Integrated Bar of the Philippines, and other NGOs and volunteer groups.

SEC. 9. Section 16 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

SEC. 16. *Mandatory Repatriation of Underage Migrant Workers.* – Upon discovery or being informed of the presence of migrant workers whose ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate said workers and advise the DFA through the fastest means of communication available of such discovery and other relevant information. The license of a recruitment/manning agency which recruited or deployed an underage migrant worker shall be automatically revoked and shall be imposed a fine of not less than Five Hundred Thousand Pesos (P 500,000) but not more than One Million Pesos (P 1 million). All fees pertinent to the processing of papers or documents in the recruitment or deployment shall be refunded in full by the responsible recruitment/manning agency, without need of notice, to the underage migrant worker or to his parents or guardian. The refund shall be independent of and in addition to the indemnification for the damages sustained by the underage migrant worker. The refund shall be paid within 30 days from the date of the mandatory repatriation as provided for in this Act.

SEC. 10. Section 17 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 17. *Establishment of National Reintegration Center for Overseas Filipino Workers.* – A national reintegration center for overseas Filipino workers (NRCO) is hereby created in the DOLE for returning Filipino migrant workers which shall provide a mechanism for their reintegration into the Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

The Department of Labor and Employment, the Overseas Workers Welfare Administration (OWWA), and the POEA shall, within 90 days from the effectivity of this Act, formulate a program that would motivate migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial development, better wage employment, and investment of savings.

For this purpose, the Technical Education and Skills Development Authority (TESDA), the Technology Livelihood Resource Center (TLRC), and other government agencies involved in training and livelihood development shall give priority to returnees who had been employed as domestic helpers and entertainers.

SEC. 11. Section 18 of RA No. 8042, as amended is hereby amended to read as follows:

SEC. 18. *Functions of the National Reintegration Center for Overseas Filipino Workers.* – The Center shall provide the following services:

- (a) Develop and support programs and projects for livelihood, entrepreneurship, savings, investments and financial literacy for returning Filipino migrant workers and their families in coordination with relevant stakeholders, service providers and international organizations;

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- (b) Coordinate with appropriate stakeholders, service providers and relevant international organizations for the promotion, development and the full utilization of overseas Filipino worker returnees and their potentials;
- (c) Institute, in cooperation with other government agencies concerned, a computer-based information system on returning Filipino migrant workers shall be accessible to all local recruitment agencies and employers, both public and private;
- (d) Prove a periodic study and assessment of job opportunities for returning Filipino migrant workers;
- (e) Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers;
- (f) Maintain an internet-based communication system for on-line registration and interaction with clients, and maintain and upgrade computer-based service capabilities of the NRCO;
- (g) Develop capacity-building programs for returning overseas Filipino workers and their families, implementers, service providers, and stakeholders; and
- (h) Conduct research for policy recommendations and program development.

Sec. 12. The second paragraph of Section 19 of RA No. 8042, as amended, is hereby amended to read as follows:

The establishment and operations of the Center shall be a joint undertaking of the various government agencies. The Center shall be open for 24 hours daily including Saturdays, Sundays and holidays, and shall be staffed by Foreign Service personnel, service attaches or officers who represent other Philippine government agencies abroad and, if available, individual volunteers and *bona fide* NGOs from the host countries. In countries categorized as highly problematic by the DFA and the DOLE and where there is a concentration of Filipino migrant workers, the government must provide a *Sharia* or human rights lawyer, a psychologist and a social worker for the Center. In addition to these personnel, the government must also hire within the receiving country, in such number as may be needed by the post, public relation officers or case officers who are conversant, orally and in writing, with the local language, laws, customs and practices. The Labor Attaché shall coordinate the operation of the Center and shall keep the Chief of Mission informed and updated on all matters affecting it.

Sec. 13. Section 20 of RA No. 8042, as amended, is hereby amended to read as follows:

Sec. 20. Establishment of a Shared Government Information System for Migration. – An inter-agency committee composed of the DFA and its attached agency, the Commission on Filipinos Overseas, the DOLE and its attached concerned agencies, the Department of Tourism, the DOJ, the Bureau of Immigration, the National Bureau of Investigation, the Department of the Interior and Local Government, the National Telecommunications Commission, the Commission on Information and Communications Technology, the National Computer Center, the National Statistical and Coordination Board, the National Statistics Office and other government agencies concerned with overseas employment shall be established to implement a shared government information system for migration. The inter-agency committee shall initially make available to itself the information contained in existing data bases/files. The second phase shall involve linking of computer facilities in order to allow free-flow data exchanges and sharing among concerned agencies.

The inter-agency committee shall be co-chaired by the DFA and the DOLE. The National Computer Center shall provide the necessary technical assistance and shall set the appropriate information and communications technology standards to facilitate the sharing of information among the member agencies.

The inter-agency committee shall meet regularly to ensure the immediate and full implementation of this section and shall explore the possibility of setting up a central storage facility for the data on migration. The progress of the implementation of this section shall be included in the report to Congress of the DFA and the DOLE under Section 33.

The inter-agency committee shall convene to identify existing data bases which shall be declassified and shared among member agencies. These shared data bases shall initially include, but not be limited to, the following information:

- (a) Masterlists of Filipino migrant workers/overseas Filipino classified according to occupation/job category, civil status, by country/state of destination including visa classification;
- (b) Inventory of pending legal cases involving Filipino migrant workers and other Filipino nationals, including those serving prison terms;
- (c) Masterlists of departing/arriving Filipinos;
- (d) Statistical profile on Filipino migrant workers/overseas Filipinos/tourists;

- (e) Blacklisted foreigners/undesirable aliens;
- (f) Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with large numbers of Filipinos;
- (g) List of labor and other human rights instruments where receiving countries are signatories;
- (h) A tracking system of past and present gender disaggregated cases involving male and female migrant workers, including minors; and
- (i) Listing of overseas posts which may render assistance to overseas Filipinos, in general, and migrant workers, in particular.

Sec. 14. Subparagraph (b.1) of paragraph (b) of Section 23 of RA No. 8042, as amended, is hereby amended to read as follows:

- (b.1) Philippine Overseas Employment Administration. – The Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It shall be responsible for the regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers. In appropriate cases, the Administration shall allow the lifting of suspension of erring recruitment/manning agencies upon the payment of fine of Fifty Thousand Pesos (P50,000) for every month of suspension.

In addition to its powers and functions, the Administration shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights. It shall also be responsible for the implementation, in partnership with other law-enforcement agencies, of an intensified program against illegal recruitment activities. For this purpose, the POEA shall provide comprehensive Pre-Employment Orientation Seminars (PEOS) that will discuss topics such as prevention of illegal recruitment and gender-sensitivity.

The Administration shall not engage in the recruitment and placement of overseas workers except on a government-to-government arrangement only.

In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the Administration shall deploy only to countries where the Philippines has concluded bilateral labor agreements or arrangements: *Provided*, That such countries shall guarantee to protect the rights of Filipino migrant workers; and *Provided, further*, That such countries shall observe and/or comply with the international laws and standards for migrant workers.

Sec. 15. Sub-paragraph (b.2) of Paragraph (b) of Section 23 of RA No. 8042, as amended, is hereby amended to read as follows:

- (b.2) Overseas Workers Welfare Administration. – The Welfare officer or in his absence, the coordinating officer shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals. In the performance of this function, he shall make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the compliance or problems brought to his attention. The OWWA shall likewise formulate and implement welfare programs for overseas Filipino workers and their families while they are abroad and upon their return. It shall ensure the awareness by the overseas Filipino workers and their families of these programs and other related governmental programs.

In the repatriation of workers to be undertaken by OWWA, the latter shall be authorized to pay repatriation-related expenses, such as fines or penalties, subject to such guidelines as the OWWA Board of Trustees may prescribe.

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Sec. 16. Under Section 23 of RA No. 8042, as amended, add new paragraphs (c) and (d) with their corresponding subparagraphs to read as follows:

- (c) Department of Health. – The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pursuant to this, the DOH shall ensure that:
- (c.1) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;
 - (c.2) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;
 - (c.3) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;
 - (c.4) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her rights as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;
 - (c.5) Within a period of three years from the effectivity of this Act, all DOH regional and/or provincial hospitals shall establish and operate clinics that can be serve the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and
 - (c.6) All DOH-accredited medical clinics, including the DOH-operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally-accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

Any foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from the participating in the overseas employment program, pursuant to POEA rules and regulations.

In case an overseas Filipino worker is found to be not medically fit upon his/her immediate arrival in the country of destination, the medical clinic that conducted the health examination/s of such overseas Filipino worker shall pay for his or her repatriation back to the Philippines and the cost of deployment of such worker.

Any DOH-accredited clinic which violates any provision of this section shall, in addition to any other liability it may have incurred, suffer the penalty of revocation of its DOH accreditation.

Any government official or employee who violates any provision of this subsection shall be removed or dismissed from service with disqualification to hold any appointive public office for five years. Such penalty is without prejudice to any other liability which he or she may have incurred under existing laws, rules or regulations.

- (d) Local Government Units. – In the fight against illegal recruitment, the local government units (LGUs), in partnership with the POEA, other concerned government agencies, and NGOs advocating the rights and welfare of overseas Filipino workers, shall take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment. To carry out this task, the following shall be undertaken by the LGUs:
- (d.1) Provide a venue for the POEA, other concerned government agencies and NGOs to conduct PEOS to their constituents on a regular basis;
 - (d.2) Establish overseas Filipino worker help desk or kiosk in their localities with the objective of providing current information to their constituents on all the processes aspects of overseas employment. Such desk or kiosk shall, as be linked to the database of all concerned government agencies, particularly the POEA for its updated lists of overseas job orders and licensed recruitment agencies in good standing.

SEC. 17. Subparagraph (c) of Section 24 of RA No. 8042, as amended, is hereby amended to read as follows:

- (c) To tap the assistance of reputable law firms, the Integrated Bar of the Philippines, other bar associations and other government legal experts on overseas Filipino worker laws to complement the government’s efforts to provide legal assistance to our migrant workers;

SEC. 18. Section 25 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 25. Legal Assistance Fund. – There is hereby established a legal assistance fund for migrant workers, hereinafter referred to as the Legal Assistance Fund (LAF), in the amount of One Hundred Million Pesos (P100 million) to be constituted from the following sources.

Fifty Million Pesos (P50 million) from the Contingency Fund of the President;

Thirty Million Pesos (P30 million) from the Contingency Fund of the President Social Fund;

Twenty Million Pesos (P20 million) from the Welfare Fund for Overseas Workers established under Letter of Instruction No. 537 as amended by Presidential Decree Nos. 1694 and 1809; and

An amount appropriated in the annual General Appropriations Act (GAA) which shall not be less than Thirty Million Pesos (P30 million) per year: *Provided*, That the balance of the LAF including the amount appropriated for the year shall not be less than One Hundred Million Pesos (P100 million): *Provided, further*, That the fund shall be treated as a special fund in the National Treasury and its balance, including the amount appropriated in the GAA, which shall form part of the Fund, shall not revert to the General Fund.

Any balances of existing funds which have been set aside by the government specifically as legal assistance or defense fund to help migrant workers shall upon effectivity of this Act, be turned over to, and form part of, the Fund created under this Act.

SEC. 19. Section 26 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 26. Uses of the Legal Assistance Fund. – The Legal Assistance Fund created under the preceding section shall be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress in accordance with the guidelines, criteria and procedures promulgated in accordance with Section 24(a) hereof. The expenditures to be charged against the Fund shall include the fees for the foreign lawyers to be hired by the Legal Assistant for Migrant Workers Affairs to represent migrant workers facing charges or in filing cases against erring or abusive employers abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses: *Provided*, That at the end of every year, the DFA shall include in its report to Congress, as provided for under Section 33 of this Act, the status of the LAF, including the expenditures from the said fund duly audited by the Commission on Audit (COA): *Provided, further*, That the hiring of foreign legal counsels, when circumstances warrant urgent action, shall be exempt from the coverage of Republic Act No. 9184 or the Government Procurement Act.

SEC. 20. Section 32 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 32. POEA, OWWA and other Boards; Additional Memberships. – Notwithstanding any provision of law to the contrary, the respective Boards of the POEA and the OWWA shall, in addition to their present composition, have three members each who shall come from the women, sea-based and land-based sectors respectively, to be selected and nominated openly by the general membership of the sector being represented.

The selection and nomination of the additional members from the women, sea-based and land-based sectors shall be governed by the following guidelines:

- (a) The POEA and the OWWA shall launch a massive information campaign on the selection of nominees and provide for a system of consultative sessions for the certified leaders or representatives of the concerned sectors, at least three times, within 90 days before the boards shall be convened, for purposes of selection. The process shall be open, democratic and transparent;
- (b) Only NGOs that protect and promote the rights and welfare of overseas Filipino workers, duly registered with the appropriate Philippine government agency and in good standing as such, and in existence for at least three years prior to the nomination shall be qualified to nominate a representative for each sector to the Board;

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- (c) The nominee must be at least 25 years of age, able to read and write, and a migrant worker at the time of his or her nomination or was a migrant worker with at least three years experience as such; and
- (d) A final list of all the nominees selected by the OWWA/POEA governing boards, which shall consist of three names for each sector to be represented, shall be submitted to the President and published in a newspaper of general circulation;

Within 30 days from the submission of the list, the President shall select and appoint from the list the representatives to the POEA/OWWA governing boards.

The additional members shall have a term of three years and shall be eligible for reappointment for another three years. In case of vacancy, the President shall in accordance with the provisions of this Act, appoint a replacement who shall serve the unexpired term of his or her predecessor.

Any executive issuances or orders issued that contravene the provisions of this section shall have no force and effect.

All other government agencies and government-owned or controlled corporations which require at least one representative from the overseas workers sector to their respective boards shall follow all the applicable provisions of this section.

SEC. 21. The first and last paragraph of Section 33 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 33. Report to Congress. – In order to inform the Philippine Congress on the implementation of the policy enunciated in Section 4 hereof, the DFA and the DOLE shall submit separately to the said body a semi-annual report of Philippine foreign posts located in countries hosting Filipino migrant workers. The mid-year report covering the period January to June shall be submitted not later than October 31 of the same year while the year-end report covering the period July to December shall be submitted not later than May 31 of the following year. The report shall include, but shall not limited to, the following information:

x x x

Any officer of the government who fails to submit the report as stated in this section shall be subject to an administrative penalty of dismissal from the service with disqualification to hold any appointive public office for five years.

SEC. 22. Section 35 of RA No. 8042, as amended, is hereby amended to read as follows:

SEC. 35. Exemption from Travel Tax, Documentary Stamp and Airport Fee. – All laws to the contrary notwithstanding, the migrant worker shall be exempt from the payment of travel tax and airport fee upon proper showing of proof of entitlement by the POEA.

The remittances of all overseas Filipino workers, upon showing of the same proof of entitlement by the overseas Filipino worker's beneficiary or recipient, shall be exempt from the payment of documentary stamp tax.

SEC. 23. A new Section 37-A. of RA No. 8042, as amended, is hereby added to read as follows:

SEC. 37-A. Compulsory Insurance Coverage for Agency-Hired Workers. - In addition to the performance bond to be filed by the recruitment/manning agency under Section 10, each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory insurance policy which shall be secured at no cost to the said worker. Such insurance policy shall be effective for the duration of the migrant worker's employment and shall cover, at the minimum:

- (a) Accidental death, with at least Fifteen Thousand United States Dollars (USD15,000) survivor's benefit payable to the migrant worker's beneficiaries;
- (b) Natural death, with at least Ten Thousand United States Dollars (USD10,000) survivor's benefit payable to the migrant worker's beneficiaries;
- (c) Permanent total disablement, with at least Seven Thousand Five Hundred United States Dollars (USD7,500) disability benefit payable to the migrant worker. The following disabilities shall be deemed permanent: total, complete loss of sight of both eyes; loss of two limbs at or above the ankles or wrists; permanent complete paralysis of two limbs; brain injury resulting to incurable imbecility or insanity;
- (d) Repatriation cost of the worker when his/her employment is terminated without any valid cause, including the transport of his or her personal belongings. In case of death, the insurance provider shall arrange and pay for the

repatriation or return of the worker's remains. The insurance provider shall also render any assistance necessary in the transport including, but not limited to, locating a local licensed funeral home, mortuary or direct disposition facility to prepare the body for transport, completing all documentation, obtaining legal clearances, procuring consular services, providing necessary casket or air transport container, as well as transporting the remains including retrieval from site of death and delivery to the receiving funeral home;

- (e) Subsistence allowance benefit, with at least One Hundred United States Dollars (USD100) per month for a maximum of six months for a migrant worker who is involved in a case or litigation for the protection of his/her rights in the receiving country;
- (f) Money claims arising from employer's liability which may be awarded or given to the worker in a judgment or settlement of his or her case in the NLRC. The insurance coverage for money claims shall be equivalent to at least three months for every year of the migrant worker's employment contract;

In addition to the above coverage, the insurance policy shall also include:

- (g) Compassionate visit. When a migrant worker is hospitalized and has been confined for at least seven consecutive days, he shall be entitled to a compassionate visit by one family member or a requested individual. The insurance company shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the worker. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements;
- (h) Medical evacuation. When an adequate medical facility is not available proximate to the migrant worker, as determined by the insurance company's physician and/or a consulting physician, evacuation under appropriate medical supervision by the mode of transport necessary shall be undertaken by the insurance provider; and
- (i) Medical repatriation. When medically necessary as determined by the attending physician, repatriation under medical supervision to the migrant worker's residence shall be undertaken by the insurance provider at such time that the migrant worker is medically cleared for travel by commercial carrier. If the period to receive medical clearance to travel exceeds 14 days from the date of discharge from the hospital, an alternative appropriate mode of transportation, such as air ambulance, may be arranged. Medical and non-medical escorts may be provided when necessary.

Only reputable private insurance companies duly registered with the Insurance Commission (IC) , which are in existence and operational for at least Five Hundred Million Pesos (P500 million) to be determined by the IC, and with a current year certificate of authority shall be qualified to provide for the worker's insurance coverage. Insurance companies who have directors, partners, officers, employees or agents with relatives, within the fourth civil degree of consanguinity or affinity, who work or have interest in any of the licensed recruitment/manning agencies or in any of the government agencies involved in the overseas employment program shall be disqualified from providing this workers' insurance coverage.

The recruitment/manning agency shall have the right to choose from any of the qualified insurance providers the company that will insure the migrant worker it will deploy. After procuring such insurance policy, the recruitment/manning agency shall provide an authenticated copy thereof to the migrant worker. It shall then submit the certificate of insurance coverage of the migrant worker to POEA as a requirement for the issuance of an Overseas Employment Certificate (OEC) to the migrant worker. In the case of seafarers who are insured under policies issued by foreign insurance companies, the POEA shall accept certificates or other proofs of cover from recruitment/manning agencies: *Provided*, That the minimum coverage under sub-paragraphs (a) to (i) are included therein.

Any person having a claim upon the policy issued pursuant to subparagraphs (a), (b), (c), (d) and (e) of this section shall present to the insurance company concerned a written notice of claim together with pertinent supporting documents. The insurance company shall forthwith ascertain the truth and extent of the claim and make payment within 10 days from the filing of the notice of claim.

Any claim arising from accidental death, natural death or disablement under this section shall be paid by the insurance company without any contest and without the necessity of providing fault or negligence of any kind on the part of the insured migrant worker: *Provided*, That the following documents, duly authenticated by the Philippine foreign posts, shall be sufficient evidence to substantiate the claim:

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- (1) Death Certificate – In case of natural or accidental death;
- (2) Police or Accident Report – In case of accidental death; and
- (3) Medical Certificate – In case of permanent disablement.

For repatriation under subparagraph (d) hereof, a certification which states the reason/s for the termination of the migrant worker's employment and the need for his or her repatriation shall be issued by the Philippine foreign post or the Philippine Overseas Labor Office (POLO) located in the receiving country.

For subsistence allowance benefit under subparagraph (e), the concerned labor attaché or, in his absence, the embassy or consular official shall issue a certification which states the name of the case, the names of the parties and the nature of the cause of action of the migrant worker.

For the payment of money claims under subparagraph (f), the following rules shall govern:

- (1) After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, an order shall be released mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within 30 days;
- (2) The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of liability insured, attaching therewith a copy of the decision or compromise agreement;
- (3) Within 10 days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof;
- (4) In case the insurance company fails to make payment within 10 days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the 30-day period, as provided in the first subparagraph hereof;
- (5) If the worker's claim was not settled within the aforesaid 30-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim;
- (6) The provision of compulsory worker's insurance under this section shall not affect the joint and solidary liability of the foreign employer and the recruitment/manning agency under Section 10;
- (7) Lawyers for the insurance companies, unless the latter is impleaded, shall be prohibited to appear before the NLRC in money claims cases under this section.

Any question or dispute in the enforcement of any insurance policy issued under this section shall be brought before the IC for mediation or adjudication.

In case it is shown by substantial evidence before the POEA that the migrant worker who was deployed by a licensed recruitment/manning agency has paid for the premium or the cost of the insurance coverage or that the said insurance coverage was used as basis by the recruitment/manning agency to claim any additional fee from the migrant worker, the said licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from engaging in the business of recruitment of overseas workers. Such penalty is without prejudice to any other liability which such persons may have incurred under existing laws, rules or regulations.

For migrant workers recruited by the POEA on a government-to-government arrangement, the POEA shall establish a foreign employers guarantee fund which shall be answerable to the workers' monetary claims arising from breach of contractual obligations. For migrant workers classified as rehires, name hires or direct hires, they may opt to be covered by this insurance coverage by requesting their foreign employers to pay for the cost of the insurance coverage or they may pay for the premium themselves. To protect the rights of these workers, the DOLE and the POEA shall provide them adequate legal assistance, including conciliation and mediation services, whether at home or abroad.

At the end of every year, the DOLE and the IC shall jointly make an assessment of the performance of all insurance providers, based upon the report of the NLRC and the POEA on their respective interactions and experiences with the insurance companies, and they shall have the authority to ban or blacklist such insurance companies which are known to be evasive or not responsive to the legitimate claims of migrant workers. The DOLE shall include such assessment in its year-end report to Congress.

For purposes of this section, the DOLE, IC, NLRC and the POEA, in consultation with the recruitment/manning agencies and legitimate NGOs advocating the rights and welfare of overseas Filipino workers, shall formulate the necessary implementing rules and regulations.

The foregoing provisions on compulsory insurance coverage shall be subject to automatic review through the Congressional Oversight Committee immediately after three years from the effectivity of this Act in order to determine its efficacy in favor of the covered overseas Filipino workers and the compliance by recruitment/manning agencies and insurance companies, without prejudice to an earlier review if necessary and warranted for the purpose of modifying, amending and/or repealing these subject provisions.

SEC. 24. A new Section 37-B of RA No. 8042, as amended, is hereby added to read as follows:

SEC. 37-B. Congressional Oversight Committee. – There is hereby created a Joint Congressional Oversight Committee composed of five Senators and five Representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The Oversight Committee shall be co-chaired by the chairpersons of the Senate Committee on Labor and Employment and the House of Representatives Committee on Overseas Workers Affairs. The Oversight Committee shall have the following duties and functions:

- (a) To set the guidelines and overall framework to monitor and ensure the proper implementation of Republic Act No. 8042, as amended, as well as all programs, projects and activities related to overseas employment;
- (b) To ensure transparency and require the submission of reports from concerned government agencies on the conduct of programs, projects and policies relating to the implementation of RA No. 8042, as amended;
- (c) To approve the budget for the programs of the Oversight Committee and all disbursements therefrom, including compensation of all personnel;
- (d) To submit periodic reports to the President of the Philippines and Congress on the implementation of the provisions of RA No. 8042, as amended;
- (e) To determine weaknesses in the law and recommend the necessary remedial legislation or executive measures; and
- (f) To perform such other duties, functions and responsibilities as may be necessary to attain its objectives.

The Oversight Committee shall adopt its internal rules of procedure, conduct hearings and receive testimonies, reports, and technical advice, invite or summon by *subpoena ad testificandum* any public official or private citizen to testify before it, or require any person by *subpoena duces tecum* documents or other materials as it may require consistent with the provisions of RA No. 8042, as amended.

The Oversight Committee shall organize its staff and technical panel, and appoint such personnel, whether on secondment from the Senate and the House of Representatives or on temporary, contractual, or on consultancy, and determine their compensation subject to applicable civil service laws, rules and regulations with a view to ensuring a competent and efficient secretariat.

The members of the Oversight Committee shall not receive additional compensation, allowances or emoluments for services rendered thereto except traveling, extraordinary and other necessary expenses to attain its goals and objectives.

The Oversight Committee shall exist for a period of 10 years from the effectivity of this Act and may be extended by a joint concurrent resolution.

SEC. 25. Implementing Rules and Regulations. – The departments and agencies charged with carrying out the provisions of this Act, except as otherwise provided herein, in consultation with the Senate Committee on Labor and Employment and the House of Representatives Committee on Overseas Workers Affairs, shall, within 60 days after the effectivity of this Act, formulate the necessary rules and regulations for its effective implementation.

SEC. 26. Funding. – The departments, agencies, instrumentalities, bureaus, offices and government-owned and controlled corporations charged with carrying out the provisions of this Act shall include in their respective programs the implementation of this Act, the funding of which shall be included in the General Appropriations Act. The Congressional Oversight Committee on Overseas Workers Affairs shall have the sum of Twenty-Five Million Pesos (P25 million), half of which shall be charged against the current appropriations of the Senate while the other half shall be charged against the current appropriations of the House of Representatives, to carry out its powers and

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functions for its initial operations and for fiscal years wherein the General Appropriations Act is reenacted and no provision for its continued operation is included in such Act. Thereafter, such amount necessary for its continued operations shall be included in the annual General Appropriations Act.

SEC. 27. *Separability Clause.* – If, for any reason, any portion of this Act is declared unconstitutional or invalid, the same shall not affect the validity of the other provisions not affected thereby.

SEC. 28. *Repealing Clause.* – All laws, decrees, executive orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 29. *Effectivity.* – This Act shall take effect 15 days after its publication in at least two newspapers of general circulation.

REPUBLIC ACT No. 10151
AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS,
THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE No. 4342, AS AMENDED,
OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES
Approved on June 21, 2011

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

SECTION 1. Article 130 of the Labor Code is hereby repealed.

SEC. 2. Article 131 of the Labor Code is hereby repealed.

SEC. 3. The subsequent articles in Book Three, Title III, Chapter I to Chapter IV of Presidential Decree No. 442 are hereby renumbered accordingly.

SEC. 4. A new chapter is hereby inserted after Book Three, Title III of Presidential Decree No. 442, to read as follows:

CHAPTER V

EMPLOYMENT OF NIGHT WORKERS

ARTICLE 154. Coverage.— This chapter shall apply to all persons, who shall be employed or permitted or suffered to work at night, except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation, during a period of not less than seven consecutive hours, including the interval from midnight to five o'clock in the morning, to be determined by the Secretary of Labor and Employment, after consulting the workers' representatives/labor organizations and employers.

'Night worker' means any employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit. This limit shall be fixed by the Secretary of Labor after consulting the workers' representatives/labor organizations and employers.

ART. 155. Health Assessment – At their request, workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

- (a) Before taking up an assignment as a night worker;
- (b) At regular intervals during such an assignment; and
- (c) If they experience health problems during such an assignment which are not caused by factors other than the performance of night work.

With the exception of a finding of unfitness for night work, the findings of such assessments shall not be transmitted to others without the workers' consent and shall not be used to their detriment.

ART. 156. Mandatory Facilities.— Suitable first-aid facilities shall be made available for workers performing night work, including arrangements where such workers, where necessary, can be taken immediately to a place for appropriate treatment. The employers are likewise required to provide safe and healthful working conditions and adequate or reasonable facilities such as sleeping or resting quarters in the establishment and transportation from the work premises to the nearest point of their residence subject to exceptions and guidelines to be provided by the DOLE.

ART. 157. Transfer.— Night workers who are certified as unfit for night work, due to health reasons, shall be transferred, whenever practicable, to a similar job for which they are fit to work.

If such transfer to a similar job is not practicable, these workers shall be granted the same benefits as other workers who are unable to work, or to secure employment during such period.

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A night worker certified as temporarily unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for reasons of health.

ART. 158. Women Night Workers.— Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

- (a) Before and after childbirth, for a period of at least 16 weeks, which shall be divided between the time before and after childbirth;
- (b) For additional periods, in respect of which a medical certificate is produced stating that said additional periods are necessary for the health of the mother or child:
 - (1) During pregnancy;
 - (2) During a specified time beyond the period, after childbirth is fixed pursuant to subparagraph (a) above, the length of which shall be determined by the DOLE after consulting the labor organizations and employers.

During the periods referred to in this article:

- (i) A woman worker shall not be dismissed or given notice of dismissal, except for just or authorized causes provided for in this Code that are not connected with pregnancy, childbirth and childcare responsibilities.
- (ii) A woman worker shall not lose the benefits regarding her status, seniority, and access to promotion which may attach to her regular night work position.

Pregnant women and nursing mothers may be allowed to work at night only if a competent physician, other than the company physician, shall certify their fitness to render night work, and specify, in the case of pregnant employees, the period of the pregnancy that they can safely work.

The measures referred to in this article may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave.

The provisions of this article shall not have the effect of reducing the protection and benefits connected with maternity leave under existing laws.

ART. 159. Compensation.— The compensation for night workers in the form of working time, pay or similar benefits shall recognize the exceptional nature of night work.

Art. 160. Social Services.— Appropriate social services shall be provided for night workers and, where necessary, for workers performing night work.

ART. 161. Night Work Schedules.— Before introducing work schedules requiring the services of night workers, the employer shall consult the workers' representatives/labor organizations concerned on the details of such schedules and the forms of organization of night work that are best adapted to the establishment and its personnel, as well as on the occupational health measures and social services which are required. In establishments employing night workers, consultation shall take place regularly.

SEC. 5. The subsequent articles starting from Book Four, Title I, Chapter I of Presidential Decree No. 442 are hereby renumbered accordingly.

SEC. 6. Application.— The measures referred to in this chapter shall be applied not later than six months from the effectivity of this Act.

SEC. 7. Guidelines.— The DOLE shall promulgate appropriate regulations in addition to existing ones to ensure protection, safety and welfare of night workers.

SEC. 8. Penalties.— Any violation of this Act, and the rules and regulations issued pursuant hereof shall be punished with a fine of not less than Thirty Thousand Pesos (P30,000) nor more than Fifty Thousand Pesos (P50,000) or imprisonment of not less than six months, or both, at the discretion of the court. If the offense is committed by a

corporation, trust, firm, partnership or association, or other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership or association, or entity.

SEC. 9. *Separability Clause.*— If any portion of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions not affected thereby.

SEC. 10. *Repealing Clause.*— All laws, acts, decrees, executive orders, rules and regulations or other issuances or parts thereof, which are inconsistent with this Act, are hereby modified and repealed.

SEC. 11. *Effectivity Clause.*— This Act shall take effect after 15 days following its publication in two national newspapers of general circulation.

REPUBLIC ACT No. 10152

AN ACT PROVIDING FOR MANDATORY BASIC IMMUNIZATION SERVICES FOR INFANTS AND CHILDREN, REPEALING FOR THE PURPOSE PRESIDENTIAL DECREE No. 996, AS AMENDED

Approved on June 21, 2011

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

SECTION 1. Title. – This Act shall be known as the “Mandatory Infants and Children Health Immunization Act of 2011.”

SEC. 2. Declaration of Policy. – In accordance with Article II, Section 15 of the Constitution, it is hereby declared to be the policy of the State to take a proactive role in the preventive health care of infants and children. Towards this end, the State shall adopt a comprehensive, mandatory and sustainable immunization program for vaccine-preventable diseases for all infants and children.

SEC. 3. Coverage. – The mandatory basic immunization for all infants and children provided under this Act shall cover the following vaccine-preventable diseases:

- (a) Tuberculosis;
- (b) Diphtheria, tetanus and pertussis;
- (c) Poliomyelitis;
- (d) Measles;
- (e) Mumps;
- (f) Rubella or German measles;
- (g) Hepatitis-B;
- (h) H. Influenza type B (HIB); and
- (i) Such other types as may be determined by the Secretary of Health in a department circular.

The mandatory basic immunization shall be given for free at any government hospital or health center to infants and children up to five years of age.

Hepatitis-B vaccine shall be administered by any duly licensed physician, nurse or midwife to all infants born in hospitals, health infirmaries, health centers or lying-in centers with obstetrical and pediatric services, whether public or private, within 24 hours after birth: *Provided, however,* That in cases of infants born in places other than the above, any duly licensed physician, nurse or midwife who delivers, or assists in the delivery of the newborn shall be responsible for administering the vaccine to the latter: *Provided, further,* That for deliveries assisted by persons other than the health professionals mentioned above, the infant should be brought to any available health care facility so as to be immunized against Hepatitis-B within 24 hours after birth but not later than seven days: *Provided, finally,* That subsequent doses of Hepatitis-B vaccination shall be completed according to the recommended schedule of Hepatitis-B immunization, as may be provided in the implementing rules and regulations to be issued by the Department of Health (DOH).

SEC. 4. Education and Information Campaign. – All health care practitioners or health care workers who are administering prenatal care shall educate all pregnant mothers on the importance of giving their infants the basic immunization services as well as any possible effects of immunization.

The DOH, other government agencies, nongovernment organizations, professional and academic societies, and local government unite shall make available appropriate information materials and shall have a system of its distribution to the public.

SEC. 5. *Obligation to Inform.* – Any physician, nurse, midwife, nursing aide or skilled birth attendant, who delivers, or assists in the delivery of, a newborn shall, prior to delivery, inform parents or legal guardian of the newborn of the availability, nature and benefits of immunization against Hepatitis-B and other vaccine-preventable diseases at birth.

SEC. 6. *Continuing Education and Training of Health Personnel.* – The DOH, with the assistance of local government units, academe, professional societies and nongovernmental organizations, shall undertake continuing information, education and training programs for all health personnel on the rationale and benefits of as well as modern procedures for immunization of infants and children against vaccine-preventable diseases.

SEC. 7. *Appropriations.* – The amount necessary to carry out the implementation of this Act shall be charged against the current year's appropriations for expanded program on immunization of the DOH. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

The Philippine Health Insurance Corporation (PHIC) shall include the basic immunization services in its benefit package.

SEC. 8. *Implementing Rules and Regulations.* – The DOH, in consultation with the National Immunization Committee, shall issue the implementing rules and regulations within 90 days after the approval of this Act.

SEC. 9. *Separability Clause.* – If, for any reason, any part or provision of this Act shall be declared unconstitutional or invalid, the remaining provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 10. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations or parts thereof which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 11. *Effectivity.* – This Act shall take effect 15 days after its publication in the Official Gazette or in at least two newspapers of general circulation.

REPUBLIC ACT No. 10158

**AN ACT DECRIMINALIZING VAGRANCY, AMENDING FOR THIS PURPOSE ARTICLE 202 OF ACT No. 3815,
AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE**

Approved on March 27, 2012

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

SECTION 1. Article 202 of the Revised Penal Code is hereby, amended to read as follows:

ART. 202. Prostitutes; Penalty. – For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

SEC. 2. Effect on Pending Cases. – All pending cases under the provisions of Article 202 of the Revised Penal Code on Vagrancy prior to its amendment by this Act shall be dismissed upon effectivity of this Act.

SEC. 3. Immediate Release of Convicted Persons. – All persons serving sentence for violation of the provisions of Article 202 of the Revised Penal Code on Vagrancy prior to its amendment by this Act shall be immediately released upon effectivity of this Act: *Provided*, That they are not serving sentence or detained for any other offense or felony.

SEC. 4. Repealing Clause. – All laws, presidential decrees, executive orders, rules and regulations and other issuances, or any part thereof, inconsistent with this Act are hereby repealed, modified or amended accordingly.

SEC. 5. Effectivity Clause. – This Act shall take effect 15 days after its publication in the Official Gazette or in at least two newspapers of general circulation.

REPUBLIC ACT No. 10165
AN ACT TO STRENGTHEN AND PROPAGATE FOSTER CARE AND TO PROVIDE FUNDS THEREFOR
Approved on June 11, 2012

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 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.

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 18 years of age, or one who is over 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.

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- (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

SECTION 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 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 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

SECTION 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

SECTION. 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 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.

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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

SECTION 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 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 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 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

SECTION 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

SECTION 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

SECTION 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 (P25,000) additional exemption for foster parents for each dependent not exceeding four 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

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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 taxable year.

For purposes of this section, only one 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 30 percent of the amount of donations shall be spent for administrative expenses.

ARTICLE IX PENALTIES

SECTION 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 (P25,000) but not exceeding Fifty Thousand Pesos (P50,000); and
 - (2) For any subsequent violation, a fine of not less than Fifty Thousand Pesos (P50,000) but not exceeding One Hundred Thousand Pesos (P100,000), 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 month to six years, depending on the gravity of the offense or a fine of not less than Ten Thousand Pesos (P10,000) but not more than One Hundred Thousand Pesos (P100,000), 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

SECTION 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 (P25 million) 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 for the 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 three 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 15 days after its publication in two newspapers of general circulation or in the Official Gazette.

REPUBLIC ACT No. 10175
AN ACT DEFINING CYBERCRIME, PROVIDING FOR THE PREVENTION, INVESTIGATION,
SUPPRESSION AND THE IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES
Approved on September 12, 2012

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

CHAPTER I

PRELIMINARY PROVISIONS

SECTION 1. Title. — This Act shall be known as the “*Cybercrime Prevention Act of 2012.*”

SEC. 2. Declaration of Policy. — The State recognizes the vital role of information and communications industries such as content production, telecommunications, broadcasting electronic commerce, and data processing, in the nation’s overall social and economic development. The State also recognizes the importance of providing an environment conducive to the development, acceleration, and rational application and exploitation of information and communications technology (ICT) to attain free, easy, and intelligible access to exchange and/or delivery of information; and the need to protect and safeguard the integrity of computer, computer and communications systems, networks, and databases, and the confidentiality, integrity, and availability of information and data stored therein, from all forms of misuse, abuse, and illegal access by making punishable under the law such conduct or conducts. In this light, the State shall adopt sufficient powers to effectively prevent and combat such offenses by facilitating their detection, investigation, and prosecution at both the domestic and international levels, and by providing arrangements for fast and reliable international cooperation.

SEC. 3. Definition of Terms. — For purposes of this Act, the following terms are hereby defined as follows:

- (a) *Access* refers to the instruction, communication with, storing data in, retrieving data from, or otherwise making use of any resources of a computer system or communication network.
- (b) *Alteration* refers to the modification or change, in form or substance, of an existing computer data or program.
- (c) *Communication* refers to the transmission of information through ICT media, including voice, video and other forms of data.
- (d) *Computer* refers to an electronic, magnetic, optical, electrochemical, or other data processing or communications device, or grouping of such devices, capable of performing logical, arithmetic, routing, or storage functions and which includes any storage facility or equipment or communications facility or equipment directly related to or operating in conjunction with such device. It covers any type of computer device including devices with data processing capabilities like mobile phones, smart phones, computer networks and other devices connected to the internet.
- (e) *Computer data* refers to any representation of facts, information, or concepts in a form suitable for processing in a computer system including a program suitable to cause a computer system to perform a function and includes electronic documents and/or electronic data messages whether stored in local computer systems or online.
- (f) *Computer program* refers to a set of instructions executed by the computer to achieve intended results.
- (g) *Computer system* refers to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including, but not limited to, computers and mobile phones. The device consisting of hardware and software may include input, output and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media.

- (h) *Without right* refers to either:
 - (i) conduct undertaken without or in excess of authority; or
 - (ii) conduct not covered by established legal defenses, excuses, court orders, justifications, or relevant principles under the law.
- (i) *Cyber* refers to a computer or a computer network, the electronic medium in which online communication takes place.
- (j) *Critical infrastructure* refers to the computer systems, and/or networks, whether physical or virtual, and/or the computer programs, computer data and/or traffic data so vital to this country that the incapacity or destruction of or interference with such system and assets would have a debilitating impact on security, national or economic security, national public health and safety, or any combination of those matters.
- (k) *Cybersecurity* refers to the collection of tools, policies, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment and organization and user's assets.
- (l) *Database* refers to a representation of information, knowledge, facts, concepts, or instructions which are being prepared, processed or stored or have been prepared, processed or stored in a formalized manner and which are intended for use in a computer system.
- (m) *Interception* refers to listening to, recording, monitoring or surveillance of the content of communications, including procuring of the content of data, either directly, through access and use of a computer system or indirectly, through the use of electronic eavesdropping or tapping devices, at the same time that the communication is occurring.
- (n) *Service provider* refers to:
 - (1) Any public or private entity that provides to users of its service the ability to communicate by means of a computer system; and
 - (2) Any other entity that processes or stores computer data on behalf of such communication service or users of such service.
- (o) *Subscriber's information* refers to any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which identity can be established:
 - (1) The type of communication service used, the technical provisions taken thereto and the period of service;
 - (2) The subscriber's identity, postal or geographic address, telephone and other access numbers, any assigned network address, billing and payment information, available on the basis of the service agreement or arrangement; and
 - (3) Any other available information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.
- (p) *Traffic data or non-content data* refers to any computer data other than the content of the communication including, but not limited to, the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

CHAPTER II

PUNISHABLE ACTS

SECTION 4. *Cybercrime Offenses.* — The following acts constitute the offense of cybercrime punishable under this Act:

- (a) Offenses against the confidentiality, integrity and availability of computer data and systems:

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- (1) Illegal Access. — The access to the whole or any part of a computer system without right.
 - (2) Illegal Interception. — The interception made by technical means without right of any non-public transmission of computer data to, from, or within a computer system including electromagnetic emissions from a computer system carrying such computer data.
 - (3) Data Interference. — The intentional or reckless alteration, damaging, deletion or deterioration of computer data, electronic document, or electronic data message, without right, including the introduction or transmission of viruses.
 - (4) System Interference. — The intentional alteration or reckless hindering or interference with the functioning of a computer or computer network by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data or program, electronic document, or electronic data message, without right or authority, including the introduction or transmission of viruses.
 - (5) Misuse of Devices.
 - (i) The use, production, sale, procurement, importation, distribution, or otherwise making available, without right, of:
 - (aa) A device, including a computer program, designed or adapted primarily for the purpose of committing any of the offenses under this Act; or
 - (bb) A computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed with intent that it be used for the purpose of committing any of the offenses under this Act.
 - (ii) The possession of an item referred to in paragraphs 5(i)(aa) or (bb) above with intent to use said devices for the purpose of committing any of the offenses under this section.
 - (6) Cyber-squatting. — The acquisition of a domain name over the internet in bad faith to profit, mislead, destroy reputation, and deprive others from registering the same, if such a domain name is:
 - (i) Similar, identical, or confusingly similar to an existing trademark registered with the appropriate government agency at the time of the domain name registration:
 - (ii) Identical or in any way similar with the name of a person other than the registrant, in case of a personal name; and
 - (iii) Acquired without right or with intellectual property interests in it.
- (b) Computer-related Offenses:
- (1) Computer-related Forgery.
 - (i) The input, alteration, or deletion of any computer data without right resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible; or
 - (ii) The act of knowingly using computer data which is the product of computer-related forgery as defined herein, for the purpose of perpetuating a fraudulent or dishonest design.
 - (2) Computer-related Fraud. — The unauthorized input, alteration, or deletion of computer data or program or interference in the functioning of a computer system, causing damage thereby with fraudulent intent: *Provided*, That if no damage has yet been caused, the penalty imposable shall be one degree lower.
 - (3) Computer-related Identity Theft. — The intentional acquisition, use, misuse, transfer, possession, alteration or deletion of identifying information belonging to another, whether natural or juridical, without right: *Provided*, That if no damage has yet been caused, the penalty imposable shall be one degree lower.

(c) Content-related Offenses:

- (1) Cybersex. — The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.
- (2) Child Pornography. — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: *Provided*, That the penalty to be imposed shall be one degree higher than that provided for in Republic Act No. 9775.
- (3) Unsolicited Commercial Communications. — The transmission of commercial electronic communication with the use of computer system which seek to advertise, sell, or offer for sale products and services are prohibited unless:
 - (i) There is prior affirmative consent from the recipient; or
 - (ii) The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or
 - (iii) The following conditions are present:
 - (aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source;
 - (bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and
 - (cc) The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.
- (4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

SEC. 5. Other Offenses. — The following acts shall also constitute an offense:

- (a) Aiding or Abetting in the Commission of Cybercrime. — Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.
- (b) Attempt in the Commission of Cybercrime. — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable.

SEC. 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided*, That the penalty to be imposed shall be one degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

SEC. 7. Liability under Other Laws. — A prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, as amended, or special laws.

CHAPTER III

PENALTIES

SECTION 8. Penalties. — Any person found guilty of any of the punishable acts enumerated in Sections 4(a) and 4(b) of this Act shall be punished with imprisonment of *prision mayor* or a fine of at least Two Hundred Thousand Pesos (P200,000) up to a maximum amount commensurate to the damage incurred or both.

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Any person found guilty of the punishable act under Section 4(a)(5) shall be punished with imprisonment of *prision mayor* or a fine of not more than Five Hundred Thousand Pesos (P500,000) or both.

If punishable acts in Section 4(a) are committed against critical infrastructure, the penalty of *reclusion temporal* or a fine of at least Five Hundred Thousand Pesos (P500,000) up to maximum amount commensurate to the damage incurred or both, shall be imposed.

Any person found guilty of any of the punishable acts enumerated in Section 4(c)(1) of this Act shall be punished with imprisonment of *prision mayor* or a fine of at least Two Hundred Thousand Pesos (P200,000) but not exceeding One Million Pesos (P1 million) or both.

Any person found guilty of any of the punishable acts enumerated in Section 4(c)(2) of this Act shall be punished with the penalties as enumerated in Republic Act No. 9775 or the "Anti-Child Pornography Act of 2009": *Provided*, That the penalty to be imposed shall be one degree higher than that provided for in Republic Act No. 9775, if committed through a computer system.

Any person found guilty of any of the punishable acts enumerated in Section 4(c)(3) shall be punished with imprisonment of *arresto mayor* or a fine of at least Fifty Thousand Pesos (P50,000) but not exceeding Two Hundred Fifty Thousand Pesos (P250,000) or both.

Any person found guilty of any of the punishable acts enumerated in Section 5 shall be punished with imprisonment one degree lower than that of the prescribed penalty for the offense or a fine of at least One Hundred Thousand Pesos (P100,000) but not exceeding Five Hundred Thousand Pesos (P500,000) or both.

SEC. 9. Corporate Liability. — When any of the punishable acts herein defined are knowingly committed on behalf of or for the benefit of a juridical person, by a natural person acting either individually or as part of an organ of the juridical person, who has a leading position within, based on: (a) a power of representation of the juridical person provided the act committed falls within the scope of such authority; (b) an authority to take decisions on behalf of the juridical person: *Provided*, That the act committed falls within the scope of such authority; or (c) an authority to exercise control within the juridical person, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Ten Million Pesos (P10 million).

If the commission of any of the punishable acts herein defined was made possible due to the lack of supervision or control by a natural person referred to and described in the preceding paragraph, for the benefit of that juridical person by a natural person acting under its authority, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Five Million Pesos (P5 million).

The liability imposed on the juridical person shall be without prejudice to the criminal liability of the natural person who has committed the offense.

CHAPTER IV

ENFORCEMENT AND IMPLEMENTATION

SECTION 10. Law Enforcement Authorities. — The National Bureau of Investigation (NBI) and the Philippine National Police (PNP) shall be responsible for the efficient and effective law enforcement of the provisions of this Act. The NBI and the PNP shall organize a cybercrime unit or center manned by special investigators to exclusively handle cases involving violations of this Act.

SEC. 11. Duties of Law Enforcement Authorities. — To ensure that the technical nature of cybercrime and its prevention is given focus and considering the procedures involved for international cooperation, law enforcement authorities specifically the computer or technology crime divisions or units responsible for the investigation of cybercrimes are required to submit timely and regular reports including pre-operation, post-operation and investigation results and such other documents as may be required to the Department of Justice (DOJ) for review and monitoring.

SEC. 12. *Real-Time Collection of Traffic Data.* — Law enforcement authorities, with due cause, shall be authorized to collect or record by technical or electronic means traffic data in real-time associated with specified communications transmitted by means of a computer system.

Traffic data refer only to the communication's origin, destination, route, time, date, size, duration, or type of underlying service, but not content, nor identities.

All other data to be collected or seized or disclosed will require a court warrant.

Service providers are required to cooperate and assist law enforcement authorities in the collection or recording of the above-stated information.

The court warrant required under this section shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and the showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed, or is being committed, or is about to be committed; (2) that there are reasonable grounds to believe that evidence that will be obtained is essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes; and (3) that there are no other means readily available for obtaining such evidence.

SEC. 13. *Preservation of Computer Data.* — The integrity of traffic data and subscriber information relating to communication services provided by a service provider shall be preserved for a minimum period of six months from the date of the transaction. Content data shall be similarly preserved for six months from the date of receipt of the order from law enforcement authorities requiring its preservation.

Law enforcement authorities may order a one-time extension for another six months: *Provided*, That once computer data preserved, transmitted or stored by a service provider is used as evidence in a case, the mere furnishing to such service provider of the transmittal document to the Office of the Prosecutor shall be deemed a notification to preserve the computer data until the termination of the case.

The service provider ordered to preserve computer data shall keep confidential the order and its compliance.

SEC. 14. *Disclosure of Computer Data.* — Law enforcement authorities, upon securing a court warrant, shall issue an order requiring any person or service provider to disclose or submit subscriber's information, traffic data or relevant data in his/its possession or control within 72 hours from receipt of the order in relation to a valid complaint officially docketed and assigned for investigation and the disclosure is necessary and relevant for the purpose of investigation.

SEC. 15. *Search, Seizure and Examination of Computer Data.* — Where a search and seizure warrant is properly issued, the law enforcement authorities shall likewise have the following powers and duties.

Within the time period specified in the warrant, to conduct interception, as defined in this Act, and:

- (a) To secure a computer system or a computer data storage medium;
- (b) To make and retain a copy of those computer data secured;
- (c) To maintain the integrity of the relevant stored computer data;
- (d) To conduct forensic analysis or examination of the computer data storage medium; and
- (e) To render inaccessible or remove those computer data in the accessed computer or computer and communications network.

Pursuant thereof, the law enforcement authorities may order any person who has knowledge about the functioning of the computer system and the measures to protect and preserve the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the search, seizure and examination.

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Law enforcement authorities may request for an extension of time to complete the examination of the computer data storage medium and to make a return thereon but in no case for a period longer than 30 days from date of approval by the court.

SEC. 16. Custody of Computer Data. — All computer data, including content and traffic data, examined under a proper warrant shall, within 48 hours after the expiration of the period fixed therein, be deposited with the court in a sealed package, and shall be accompanied by an affidavit of the law enforcement authority executing it stating the dates and times covered by the examination, and the law enforcement authority who may access the deposit, among other relevant data. The law enforcement authority shall also certify that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the package deposited with the court. The package so deposited shall not be opened, or the recordings replayed, or used in evidence, or then contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

SEC. 17. Destruction of Computer Data. — Upon expiration of the periods as provided in Sections 13 and 15, service providers and law enforcement authorities, as the case may be, shall immediately and completely destroy the computer data subject of a preservation and examination.

SEC. 18. Exclusionary Rule. — Any evidence procured without a valid warrant or beyond the authority of the same shall be inadmissible for any proceeding before any court or tribunal.

SEC. 19. Restricting or Blocking Access to Computer Data. — When a computer data is *prima facie* found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data.

SEC. 20. Noncompliance. — Failure to comply with the provisions of Chapter IV hereof specifically the orders from law enforcement authorities shall be punished as a violation of Presidential Decree No. 1829 with imprisonment of *prision correccional* in its maximum period or a fine of One Hundred Thousand Pesos (P100,000) or both, for each and every noncompliance with an order issued by law enforcement authorities.

CHAPTER V

JURISDICTION

SECTION 21. Jurisdiction. — The Regional Trial Court shall have jurisdiction over any violation of the provisions of this Act including any violation committed by a Filipino national regardless of the place of commission. Jurisdiction shall lie if any of the elements was committed within the Philippines or committed with the use of any computer system wholly or partly situated in the country, or when by such commission any damage is caused to a natural or juridical person who, at the time the offense was committed, was in the Philippines.

There shall be designated special cybercrime courts manned by specially trained judges to handle cybercrime cases.

CHAPTER VI

INTERNATIONAL COOPERATION

SECTION 22. General Principles Relating to International Cooperation — All relevant international instruments on international cooperation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offenses related to computer systems and data, or for the collection of evidence in electronic form of a criminal, offense shall be given full force and effect.

CHAPTER VII
COMPETENT AUTHORITIES

SECTION 23. *Department of Justice (DOJ).* — There is hereby created an Office of Cybercrime within the DOJ designated as the central authority in all matters related to international mutual assistance and extradition.

SEC. 24. *Cybercrime Investigation and Coordinating Center.* — There is hereby created, within 30 days from the effectivity of this Act, an inter-agency body to be known as the Cybercrime Investigation and Coordinating Center (CICC), under the administrative supervision of the Office of the President, for policy coordination among concerned agencies and for the formulation and enforcement of the national cybersecurity plan.

SEC. 25. *Composition.* — The CICC shall be headed by the Executive Director of the Information and Communications Technology Office under the Department of Science and Technology (ICTO-DOST) as Chairperson with the Director of the NBI as Vice Chairperson; the Chief of the PNP; Head of the DOJ Office of Cybercrime; and one representative from the private sector and academe, as members. The CICC shall be manned by a secretariat of selected existing personnel and representatives from the different participating agencies.

SEC. 26. *Powers and Functions.* — The CICC shall have the following powers and functions:

- (a) To formulate a national cybersecurity plan and extend immediate assistance for the suppression of real-time commission of cybercrime offenses through a computer emergency response team (CERT);
- (b) To coordinate the preparation of appropriate and effective measures to prevent and suppress cybercrime activities as provided for in this Act;
- (c) To monitor cybercrime cases being bandied by participating law enforcement and prosecution agencies;
- (d) To facilitate international cooperation on intelligence, investigations, training and capacity building related to cybercrime prevention, suppression and prosecution;
- (e) To coordinate the support and participation of the business sector, local government units and nongovernment organizations in cybercrime prevention programs and other related projects;
- (f) To recommend the enactment of appropriate laws, issuances, measures and policies;
- (g) To call upon any government agency to render assistance in the accomplishment of the CICC's mandated tasks and functions; and
- (h) To perform all other matters related to cybercrime prevention and suppression, including capacity building and such other functions and duties as may be necessary for the proper implementation of this Act.

CHAPTER VIII
FINAL PROVISIONS

SECTION 27. *Appropriations.* — The amount of Fifty Million Pesos (P50 million) shall be appropriated annually for the implementation of this Act.

SEC. 28. *Implementing Rules and Regulations.* — The ICTO-DOST, the DOJ and the Department of the Interior and Local Government (DILG) shall jointly formulate the necessary rules and regulations within 90 days from approval of this Act, for its effective implementation.

SEC. 29. *Separability Clause* — If any provision of this Act is held invalid, the other provisions not affected shall remain in full force and effect.

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SEC. 30. *Repealing Clause.* — All laws, decrees or rules inconsistent with this Act are hereby repealed or modified accordingly. Section 33(a) of Republic Act No. 8792 or the “Electronic Commerce Act” is hereby modified accordingly.

SEC. 31. *Effectivity.* — This Act shall take effect 15 days after the completion of its publication in the Official Gazette or in at least two newspapers of general circulation.

REPUBLIC ACT No. 10354

AN ACT PROVIDING FOR A NATIONAL POLICY ON RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH

Approved on December 21, 2012

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

SECTION 1. Title. – This Act shall be known as “*The Responsible Parenthood and Reproductive Health Act of 2012.*”

SEC. 2. Declaration of Policy. – The State recognizes and guarantees the human rights of all persons including their right to equality and nondiscrimination of these rights, the right to sustainable human development, the right to health which includes reproductive health, the right to education and information, and the right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood.

Pursuant to the declaration of State policies under Section 12, Article II of the 1987 Philippine Constitution, it is the duty of the State to protect and strengthen the family as a basic autonomous social institution and equally protect the life of the mother and the life of the unborn from conception. The State shall protect and promote the right to health of women especially mothers in particular and of the people in general and instill health consciousness among them. The family is the natural and fundamental unit of society. The State shall likewise protect and advance the right of families in particular and the people in general to a balanced and healthful environment in accord with the rhythm and harmony of nature. The State also recognizes and guarantees the promotion and equal protection of the welfare and rights of children, the youth, and the unborn.

Moreover, the State recognizes and guarantees the promotion of gender equality, gender equity, women empowerment and dignity as a health and human rights concern and as a social responsibility. The advancement and protection of women’s human rights shall be central to the efforts of the State to address reproductive health care.

The State recognizes marriage as an inviolable social institution and the foundation of the family which in turn is the foundation of the nation. Pursuant thereto, the State shall defend:

- (a) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
- (b) 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;
- (c) The right of the family to a family living wage and income; and
- (d) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

The State likewise guarantees universal access to medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies which do not prevent the implantation of a fertilized ovum as determined by the Food and Drug Administration (FDA) and relevant information and education thereon according to the priority needs of women, children and other underprivileged sectors, giving preferential access to those identified through the National Household Targeting System for Poverty Reduction (NHTS-PR) and other government measures of identifying marginalization, who shall be voluntary beneficiaries of reproductive health care, services and supplies for free.

The State shall eradicate discriminatory practices, laws and policies that infringe on a person’s exercise of reproductive health rights.

The State shall also promote openness to life; *Provided*, That parents bring forth to the world only those children whom they can raise in a truly humane way.

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

SEC. 3. Guiding Principles for Implementation. – This Act declares the following as guiding principles:

- (a) The right to make free and informed decisions, which is central to the exercise of any right, shall not be subjected to any form of coercion and must be fully guaranteed by the State, like the right itself;
- (b) Respect for protection and fulfillment of reproductive health and rights which seek to promote the rights and welfare of every person particularly couples, adult individuals, women and adolescents;
- (c) Since human resource is among the principal assets of the country, effective and quality reproductive health care services must be given primacy to ensure maternal and child health, the health of the unborn, safe delivery and birth of healthy children, and sound replacement rate, in line with the State's duty to promote the right to health, responsible parenthood, social justice and full human development;
- (d) The provision of ethical and medically safe, legal, accessible, affordable, non-abortifacient, effective and quality reproductive health care services and supplies is essential in the promotion of people's right to health, especially those of women, the poor, and the marginalized, and shall be incorporated as a component of basic health care;
- (e) The State shall promote and provide information and access, without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards such as those registered and approved by the FDA for the poor and marginalized as identified through the NHTS-PR and other government measures of identifying marginalization: *Provided*, That the State shall also provide funding support to promote modern natural methods of family planning, especially the Billings Ovulation Method, consistent with the needs of acceptors and their religious convictions;
- (f) The State shall promote programs that:
 - (1) Enable individuals and couples to have the number of children they desire with due consideration to the health, particularly of women, and the resources available and affordable to them and in accordance with existing laws, public morals and their religious convictions: *Provided*, That no one shall be deprived, for economic reasons, of the rights to have children;
 - (2) Achieve equitable allocation and utilization of resources;
 - (3) Ensure effective partnership among national government, local government units (LGUs) and the private sector in the design, implementation, coordination, integration, monitoring and evaluation of people-centered programs to enhance the quality of life and environmental protection;
 - (4) Conduct studies to analyze demographic trends including demographic dividends from sound population policies towards sustainable human development in keeping with the principles of gender equality, protection of mothers and children, born and unborn and the promotion and protection of women's reproductive rights and health; and
 - (5) Conduct scientific studies to determine the safety and efficacy of alternative medicines and methods for reproductive health care development;
- (g) The provision of reproductive health care, information and supplies giving priority to poor beneficiaries as identified through the NHTS-PR and other government measures of identifying marginalization must be the primary responsibility of the national government consistent with its obligation to respect, protect and promote the right to health and the right to life;
- (h) The State shall respect individuals' preferences and choice of family planning methods that are in accordance with their religious convictions and cultural beliefs, taking into consideration the State's obligations under various human rights instruments;
- (i) Active participation by non-government organizations (NGOs), women's and people's organizations, civil society, faith-based organizations, the religious sector and communities is crucial to ensure that reproductive

health and population and development policies, plans, and programs will address the priority needs of women, the poor, and the marginalized;

- (j) While this Act recognizes that abortion is illegal and punishable by law, the government shall ensure that all women needing care for post-abortive complications and all other complications arising from pregnancy, labor and delivery and related issues shall be treated and counseled in a humane, nonjudgmental and compassionate manner in accordance with law and medical ethics;
- (k) Each family shall have the right to determine its ideal family size: *Provided, however,* That the State shall equip each parent with the necessary information on all aspects of family life, including reproductive health and responsible parenthood, in order to make that determination;
- (l) There shall be no demographic or population targets and the mitigation, promotion and/or stabilization of the population growth rate is incidental to the advancement of reproductive health;
- (m) Gender equality and women empowerment are central elements of reproductive health and population and development;
- (n) The resources of the country must be made to serve the entire population, especially the poor, and allocations thereof must be adequate and effective: *Provided,* That the life of the unborn is protected;
- (o) Development is a multi-faceted process that calls for the harmonization and integration of policies, plans, programs and projects that seek to uplift the quality of life of the people, more particularly the poor, the needy and the marginalized; and
- (p) That a comprehensive reproductive health program addresses the needs of people throughout their life cycle.

SEC. 4. Definition of Terms. – For the purpose of this Act, the following terms shall be defined as follows:

- (a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother’s womb or the prevention of the fertilized ovum to reach and be implanted in the mother’s womb upon determination of the FDA.
- (b) *Adolescent* refers to young people between the ages of 10 to 19 years who are in transition from childhood to adulthood.
- (c) *Basic Emergency Obstetric and Newborn Care (BEMONC)* refers to lifesaving services for emergency maternal and newborn conditions/complications being provided by a health facility or professional to include the following services: administration of parenteral oxytocic drugs, administration of dose of parenteral anticonvulsants, administration of parenteral antibiotics, administration of maternal steroids for preterm labor, performance of assisted vaginal deliveries, removal of retained placental products, and manual removal of retained placenta. It also includes neonatal interventions which include at the minimum: newborn resuscitation, provision of warmth, and referral, blood transfusion where possible.
- (d) *Comprehensive Emergency Obstetric and Newborn Care (CEMONC)* refers to lifesaving services for emergency maternal and newborn conditions/complications as in Basic Emergency Obstetric and Newborn Care plus the provision of surgical delivery (caesarian section) and blood bank services, and other highly specialized obstetric interventions. It also includes emergency neonatal care which includes at the minimum: newborn resuscitation, treatment of neonatal sepsis infection, oxygen support, and antenatal administration of (maternal) steroids for threatened premature delivery.
- (e) *Family planning* refers to a program which enables couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and to have access to a full range of safe, affordable, effective, non-abortifacient modern natural and artificial methods of planning pregnancy.

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- (f) *Fetal and infant death review* refers to a qualitative and in-depth study of the causes of fetal and infant death with the primary purpose of preventing future deaths through changes or additions to programs, plans and policies.
- (g) *Gender equality* refers to the principle of equality between women and men and equal rights to enjoy conditions in realizing their full human potentials to contribute to, and benefit from, the results of development, with the State recognizing that all human beings are free and equal in dignity and rights. It entails equality in opportunities, in the allocation of resources or benefits, or in access to services in furtherance of the rights to health and sustainable human development among others, without discrimination.
- (h) *Gender equity* refers to the policies, instruments, programs and actions that address the disadvantaged position of women in society by providing preferential treatment and affirmative action. It entails fairness and justice in the distribution of benefits and responsibilities between women and men, and often requires women-specific projects and programs to end existing inequalities. This concept recognizes that while reproductive health involves women and men, it is more critical for women's health.
- (i) *Male responsibility* refers to the involvement, commitment, accountability and responsibility of males in all areas of sexual health and reproductive health, as well as the care of reproductive health concerns specific to men.
- (j) *Maternal death review* refers to a qualitative and in-depth study of the causes of maternal death with the primary purpose of preventing future deaths through changes or additions to programs, plans and policies.
- (k) *Maternal health* refers to the health of a woman of reproductive age including, but not limited to, during pregnancy, childbirth and the postpartum period.
- (l) *Modern methods of family planning* refers to safe, effective, non-abortifacient and legal methods, whether natural or artificial, that are registered with the FDA, to plan pregnancy.
- (m) *Natural family planning* refers to a variety of methods used to plan or prevent pregnancy based on identifying the woman's fertile days.
- (n) *Public health care service provider* refers to:
 - (1) Public health care institution, which is duly licensed and accredited and devoted primarily to the maintenance and operation of facilities for health promotion, disease prevention, diagnosis, treatment and care of individuals suffering from illness, disease, injury, disability or deformity, or in need of obstetrical or other medical and nursing care;
 - (2) Public health care professional, who is a doctor of medicine, a nurse or a midwife;
 - (3) Public health worker engaged in the delivery of health care services; or
 - (4) Barangay health worker who has undergone training programs under any accredited government and NGO and who voluntarily renders primarily health care services in the community after having been accredited to function as such by the local health board in accordance with the guidelines promulgated by the Department of Health (DOH).
- (o) *Poor* refers to members of households identified as poor through the NHTS-PR by the Department of Social Welfare and Development (DSWD) or any subsequent system used by the national government in identifying the poor.
- (p) *Reproductive Health (RH)* refers to the state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. This implies that people are able to have a responsible, safe, consensual and satisfying sex life, that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. This further implies that women and men attain equal relationships in matters related to sexual relations and reproduction.

- (q) *Reproductive health care* refers to the access to a full range of methods, facilities, services and supplies that contribute to reproductive health and well-being by addressing reproductive health-related problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations. The elements of reproductive health care include the following:
- (1) Family planning information and services which shall include as a first priority making women of reproductive age fully aware of their respective cycles to make them aware of when fertilization is highly probable, as well as highly improbable;
 - (2) Maternal, infant and child health and nutrition, including breastfeeding;
 - (3) Proscription of abortion and management of abortion complications;
 - (4) Adolescent and youth reproductive health guidance and counseling;
 - (5) Prevention, treatment and management of reproductive tract infections (RTIs), HIV and AIDS and other sexually transmittable infections (STIs);
 - (6) Elimination of violence against women and children and other forms of sexual and gender-based violence;
 - (7) Education and counseling on sexuality and reproductive health;
 - (8) Treatment of breast and reproductive tract cancers and other gynecological conditions and disorders;
 - (9) Male responsibility and involvement and men's reproductive health;
 - (10) Prevention, treatment and management of infertility and sexual dysfunction;
 - (11) Reproductive health education for the adolescents; and
 - (12) Mental health aspect of reproductive health care.
- (r) *Reproductive health care program* refers to the systematic and integrated provision of reproductive health care to all citizens prioritizing women, the poor, marginalized and those invulnerable or crisis situations.
- (s) *Reproductive health rights* refers to the rights of individuals and couples, to decide freely and responsibly whether or not to have children; the number, spacing and timing of their children; to make other decisions concerning reproduction, free of discrimination, coercion and violence; to have the information and means to do so; and to attain the highest standard of sexual health and reproductive health: *Provided, however,* That reproductive health rights do not include abortion, and access to abortifacients.
- (t) *Reproductive health and sexuality education* refers to a lifelong learning process of providing and acquiring complete, accurate and relevant age- and development-appropriate information and education on reproductive health and sexuality through life skills education and other approaches.
- (u) *Reproductive Tract Infection (RTI)* refers to sexually transmitted infections (STIs), and other types of infections affecting the reproductive system.
- (v) *Responsible parenthood* refers to the will and ability of a parent to respond to the needs and aspirations of the family and children. It is likewise a shared responsibility between parents to determine and achieve the desired number of children, spacing and timing of their children according to their own family life aspirations, taking into account psychological preparedness, health status, sociocultural and economic concerns consistent with their religious convictions.
- (w) *Sexual health* refers to a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free from coercion, discrimination and violence.
- (x) *Sexually Transmitted Infection (STI)* refers to any infection that may be acquired or passed on through sexual contact, use of IV, intravenous drug needles, childbirth and breastfeeding.

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- (y) *Skilled birth attendance* refers to childbirth managed by a skilled health professional including the enabling conditions of necessary equipment and support of a functioning health system, including transport and referral faculties for emergency obstetric care.
- (z) *Skilled health professional* refers to a midwife, doctor or nurse, who has been educated and trained in the skills needed to manage normal and complicated pregnancies, childbirth and the immediate postnatal period, and in the identification, management and referral of complications in women and newborns.
- (aa) *Sustainable human development* refers to bringing people, particularly the poor and vulnerable, to the center of development process, the central purpose of which is the creation of an enabling environment in which all can enjoy long, healthy and productive lives, done in the manner that promotes their rights and protects the life opportunities of future generations and the natural ecosystem on which all life depends.

SEC. 5. Hiring of Skilled Health Professionals for Maternal Health Care and Skilled Birth Attendance. – The LGUs shall endeavor to hire an adequate number of nurses, midwives and other skilled health professionals for maternal health care and skilled birth attendance to achieve an ideal skilled health professional-to-patient ratio taking into consideration DOH targets: *Provided*, That people in geographically isolated or highly populated and depressed areas shall be provided the same level of access to health care: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

For the purposes of this Act, midwives and nurses shall be allowed to administer lifesaving drugs such as, but not limited to, oxytocin and magnesium sulfate, in accordance with the guidelines set by the DOH, under emergency conditions and when there are no physicians available: *Provided*, That they are properly trained and certified to administer these lifesaving drugs.

SEC. 6. Health Care Facilities. – Each LGU, upon its determination of the necessity based on well-supported data provided by its local health office shall endeavor to establish or upgrade hospitals and facilities with adequate and qualified personnel, equipment and supplies to be able to provide emergency obstetric and newborn care: *Provided*, That people in geographically isolated or highly populated and depressed areas shall have the same level of access and shall not be neglected by providing other means such as home visits or mobile health care clinics as needed: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

SEC. 7. Access to Family Planning. – All accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: *Provided*, That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: *Provided, further*, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible: *Provided, finally*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.

No person shall be denied information and access to family planning services, whether natural or artificial: *Provided*, That minors will not be allowed access to modern methods of family planning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage.

SEC. 8. Maternal Death Review and Fetal and Infant Death Review. – All LGUs, national and local government hospitals, and other public health units shall conduct an annual Maternal Death Review and Fetal and Infant Death Review in accordance with the guidelines set by the DOH. Such review should result in an evidence-based programming and budgeting process that would contribute to the development of more responsive reproductive health services to promote women's health and safe motherhood.

SEC. 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* – The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.

These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further,* That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent.

SEC. 10. *Procurement and Distribution of Family Planning Supplies.* – The DOH shall procure, distribute to LGUs and monitor the usage of family planning supplies for the whole country. The DOH shall coordinate with all appropriate local government bodies to plan and implement this procurement and distribution program. The supply and budget allotments shall be based on, among others, the current levels and projections of the following:

- (a) Number of women of reproductive age and couples who want to space or limit their children;
- (b) Contraceptive prevalence rate, by type of method used; and
- (c) Cost of family planning supplies.

Provided, That LGUs may implement its own procurement, distribution and monitoring program consistent with the overall provisions of this Act and the guidelines of the DOH.

SEC. 11. *Integration of Responsible Parenthood and Family Planning Component in Anti-Poverty Programs.* – A multidimensional approach shall be adopted in the implementation of policies and programs to fight poverty. Towards this end, the DOH shall implement programs prioritizing full access of poor and marginalized women as identified through the NHTS-PR and other government measures of identifying marginalization to reproductive health care, services, products and programs. The DOH shall provide such programs, technical support, including capacity building and monitoring.

SEC. 12. *PhilHealth Benefits for Serious and Life-Threatening Reproductive Health Conditions.* – All serious and life-threatening reproductive health conditions such as HIV and AIDS, breast and reproductive tract cancers, and obstetric complications, and menopausal and post-menopausal-related conditions shall be given the maximum benefits, including the provision of Anti-Retroviral Medicines (ARVs), as provided in the guidelines set by the Philippine Health Insurance Corporation (PHIC).

SEC. 13. *Mobile Health Care Service.* – The national or the local government may provide each provincial, city, municipal and district hospital with a Mobile Health Care Service (MHCS) in the form of a van or other means of transportation appropriate to its terrain, taking into consideration the health care needs of each LGU. The MHCS shall deliver health care goods and services to its constituents, more particularly to the poor and needy, as well as disseminate knowledge and information on reproductive health. The MHCS shall be operated by skilled health providers and adequately equipped with a wide range of health care materials and information dissemination devices and equipment, the latter including, but not limited to, a television set for audio-visual presentations. All MHCS shall be operated by LGUs of provinces and highly urbanized cities.

SEC. 14. *Age- and Development-Appropriate Reproductive Health Education.* – The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trained teachers informal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and

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violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: *Provided*, That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents-teachers-community associations, school officials and other interest groups. The Department of Education (DepED) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.

SEC. 15. *Certificate of Compliance.* – No marriage license shall be issued by the Local Civil Registrar unless the applicants present a Certificate of Compliance issued for free by the local Family Planning Office certifying that they had duly received adequate instructions and information on responsible parenthood, family planning, breastfeeding and infant nutrition.

SEC. 16. *Capacity Building of Barangay Health Workers (BHWs).* – The DOH shall be responsible for disseminating information and providing training programs to the LGUs. The LGUs, with the technical assistance of the DOH, shall be responsible for the training of BHWs and other barangay volunteers on the promotion of reproductive health. The DOH shall provide the LGUs with medical supplies and equipment needed by BHWs to carry out their functions effectively: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision including the possible provision of additional honoraria for BHWs.

SEC. 17. *Pro Bono Services for Indigent Women.* – Private and non-government reproductive health care service providers including, but not limited to, gynecologists and obstetricians, are encouraged to provide at least 48 hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients as identified through the NHTS-PR and other government measures of identifying marginalization, especially to pregnant adolescents. The 48 hours annual *pro bono* services shall be included as a prerequisite in the accreditation under the PhilHealth.

SEC. 18. *Sexual and Reproductive Health Programs for Persons with Disabilities (PWDs).* – The cities and municipalities shall endeavor that barriers to reproductive health services for PWDs are obliterated by the following:

- (a) Providing physical access, and resolving transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided;
- (b) Adapting examination tables and other laboratory procedures to the needs and conditions of PWDs;
- (c) Increasing access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures;
- (d) Providing continuing education and inclusion of rights of PWDs among health care providers; and
- (e) Undertaking activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the sexual and reproductive health needs and rights of PWDs.

SEC. 19. *Duties and Responsibilities.*

- (a) Pursuant to the herein declared policy, the DOH shall serve as the lead agency for the implementation of this Act and shall integrate in their regular operations the following functions:
 - (1) Fully and efficiently implement the reproductive health care program;
 - (2) Ensure people's access to medically safe, non-abortifacient, legal, quality and affordable reproductive health goods and services; and
 - (3) Perform such other functions necessary to attain the purposes of this Act.

- (b) The DOH, in coordination with the PHIC, as may be applicable, shall:
 - (1) Strengthen the capacities of health regulatory agencies to ensure safe, high quality, accessible and affordable reproductive health services and commodities with the concurrent strengthening and enforcement of regulatory mandates and mechanisms;
 - (2) Facilitate the involvement and participation of NGOs and the private sector in reproductive health care service delivery and in the production, distribution and delivery of quality reproductive health and family planning supplies and commodities to make them accessible and affordable to ordinary citizens;
 - (3) Engage the services, skills and proficiencies of experts in natural family planning who shall provide the necessary training for all BHWs;
 - (4) Supervise and provide assistance to LGUs in the delivery of reproductive health care services and in the purchase of family planning goods and supplies; and
 - (5) Furnish LGUs, through their respective local health offices, appropriate information and resources to keep the latter updated on current studies and researches relating to family planning, responsible parenthood, breastfeeding and infant nutrition.
- (c) The FDA shall issue strict guidelines with respect to the use of contraceptives, taking into consideration the side effects or other harmful effects of their use.
- (d) Corporate citizens shall exercise prudence in advertising its products or services through all forms of media, especially on matters relating to sexuality, further taking into consideration its influence on children and the youth.

SEC. 20. Public Awareness. – The DOH and the LGUs shall initiate and sustain a heightened nationwide multimedia-campaign to raise the level of public awareness on the protection and promotion of reproductive health and rights including, but not limited to, maternal health and nutrition, family planning and responsible parenthood information and services, adolescent and youth reproductive health, guidance and counseling and other elements of reproductive health care under Section 4(q).

Education and information materials to be developed and disseminated for this purpose shall be reviewed regularly to ensure their effectiveness and relevance.

SEC. 21. Reporting Requirements. – Before the end of April each year, the DOH shall submit to the President of the Philippines and Congress an annual consolidated report, which shall provide a definitive and comprehensive assessment of the implementation of its programs and those of other government agencies and instrumentalities and recommend priorities for executive and legislative actions. The report shall be printed and distributed to all national agencies, the LGUs, NGOs and private sector organizations involved in said programs.

The annual report shall evaluate the content, implementation, and impact of all policies related to reproductive health and family planning to ensure that such policies promote, protect and fulfill women’s reproductive health and rights.

SEC. 22. Congressional Oversight Committee on Reproductive Health Act. – There is hereby created a Congressional Oversight Committee (COC) composed of five members each from the Senate and the House of Representatives. The members from the Senate and the House of Representatives shall be appointed by the Senate President and the Speaker, respectively, with at least one member representing the Minority.

The COC shall be headed by the respective Chairs of the Committee on Health and Demography of the Senate and the Committee on Population and Family Relations of the House of Representatives. The Secretariat of the COC shall come from the existing Secretariat personnel of the Senate and the House of Representatives committees concerned.

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The COC shall monitor and ensure the effective implementation of this Act, recommend the necessary remedial legislation or administrative measures, and shall conduct a review of this Act every five years from its effectivity. The COC shall perform such other duties and functions as may be necessary to attain the objectives of this Act.

Sec. 23. Prohibited Acts. – The following acts are prohibited:

- (a) Any health care service provider, whether public or private, who shall:
 - (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;
 - (2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:
 - (i) Spousal consent in case of married persons: *Provided*, That in case of disagreement, the decision of the one undergoing the procedure shall prevail; and
 - (ii) Parental consent or that of the person exercising parental authority in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures and in no case shall consent be required in emergency or serious cases as defined in Republic Act No. 8344; and
 - (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: *Provided*, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible: *Provided, further*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;
- (b) Any public officer, elected or appointed, specifically charged with the duty to implement the provisions hereof, who, personally or through a subordinate, prohibits or restricts the delivery of legal and medically-safe reproductive health care services, including family planning; or forces, coerces or induces any person to use such services; or refuses to allocate, approve or release any budget for reproductive health care services, or to support reproductive health programs; or shall do any act that hinders the full implementation of a reproductive health program as mandated by this Act;
- (c) Any employer who shall suggest, require, unduly influence or cause any applicant for employment or an employee to submit himself/herself to sterilization, use any modern methods of family planning, or not use such methods as a condition for employment, continued employment, promotion or the provision of employment benefits. Further, pregnancy or the number of children shall not be a ground for non-hiring or termination from employment;
- (d) Any person who shall falsify a Certificate of Compliance as required in Section 15 of this Act; and
- (e) Any pharmaceutical company, whether domestic or multinational, or its agents or distributors, which directly or indirectly colludes with government officials, whether appointed or elected, in the distribution, procurement and/or sale by the national government and LGUs of modern family planning supplies, products and devices.

Sec. 24. Penalties. – Any violation of this Act or commission of the foregoing prohibited acts shall be penalized by imprisonment ranging from one month to six months or a fine of Ten Thousand Pesos (P10,000) to One Hundred

Thousand Pesos (P100,000), or both such fine and imprisonment at the discretion of the competent court: *Provided*, That, if the offender is a public officer, elected or appointed, he/she shall also suffer the penalty of suspension not exceeding one year or removal and forfeiture of retirement benefits depending on the gravity of the offense after due notice and hearing by the appropriate body or agency.

If the offender is a juridical person, the penalty shall be imposed upon the president or any responsible officer. An offender who is an alien shall, after service of sentence, be deported immediately without further proceedings by the Bureau of Immigration. If the offender is a pharmaceutical company, its agent and/or distributor, their license or permit to operate or conduct business in the Philippines shall be perpetually revoked, and a fine triple the amount involved in the violation shall be imposed.

SEC. 25. Appropriations. – The amounts appropriated in the current annual General Appropriations Act (GAA) for reproductive health and natural and artificial family planning and responsible parenthood under the DOH and other concerned agencies shall be allocated and utilized for the implementation of this Act. Such additional sums necessary to provide for the upgrading of faculties necessary to meet BEMONC and CEMONC standards; the training and deployment of skilled health providers; natural and artificial family planning commodity requirements as outlined in Section 10, and for other reproductive health and responsible parenthood services, shall be included in the subsequent years' general appropriations. The Gender and Development (GAD) funds of LGUs and national agencies may be a source of funding for the implementation of this Act.

SEC. 26. Implementing Rules and Regulations (IRR). – Within 60 days from the effectivity of this Act, the DOH Secretary or his/her designated representative as Chairperson, the authorized representative/s of DepED, DSWD, Philippine Commission on Women, PHIC, Department of the Interior and Local Government, National Economic and Development Authority, League of Provinces, League of Cities, and League of Municipalities, together with NGOs, faith-based organizations, people's, women's and young people's organizations, shall jointly promulgate the rules and regulations for the effective implementation of this Act. At least four members of the IRR drafting committee, to be selected by the DOH Secretary, shall come from NGOs.

SEC. 27. Interpretation Clause. – This Act shall be liberally construed to ensure the provision, delivery and access to reproductive health care services, and to promote, protect and fulfill women's reproductive health and rights.

SEC. 28. Separability Clause. – If any part or provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain in force and effect.

SEC. 29. Repealing Clause. – Except for prevailing laws against abortion, any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent with the provisions of this Act including Republic Act No. 7392, otherwise known as the Midwifery Act, is hereby repealed, modified or amended accordingly.

SEC. 30. Effectivity. – This Act shall take effect 15 days after its publication in at least two newspapers of general circulation.

REPUBLIC ACT No. 10361
AN ACT INSTITUTING POLICIES FOR THE PROTECTION AND WELFARE OF DOMESTIC WORKERS
Approved on January 18, 2013

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

ARTICLE I

GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known as the “*Domestic Workers Act*” or “*Batas Kasambahay*.”

SEC. 2. Declaration of Policies. – It is hereby declared that:

- (a) The State strongly affirms labor as a primary social force and is committed to respect, promote, protect and realize the fundamental principles and rights at work including, but not limited to, abolition of child labor, elimination of all forms of forced labor, discrimination in employment and occupation, and trafficking in persons, especially women and children;
- (b) The State adheres to internationally accepted working conditions for workers in general, and establishes labor standards for domestic workers in particular, towards decent employment and income, enhanced coverage of social protection, respect for human rights and strengthened social dialogue;
- (c) The State recognizes the need to protect the rights of domestic workers against abuse, harassment, violence, economic exploitation and performance of work that is hazardous to their physical and mental health; and
- (d) The State, in protecting domestic workers and recognizing their special needs to ensure safe and healthful working conditions, promotes gender-sensitive measures in the formulation and implementation of policies and programs affecting the local domestic work.

SEC. 3. Coverage. – This Act applies to all domestic workers employed and working within the country.

SEC. 4. Definition of Terms. – As used in this Act, the term:

- (a) *Debt bondage* refers to the rendering of service by the domestic worker as security or payment for a debt where the length and nature of service is not clearly defined or when the value of the service is not reasonably applied in the payment of the debt.
- (b) *Deployment expenses* refers to expenses that are directly used for the transfer of the domestic worker from place of origin to the place of work covering the cost of transportation. Advances or loans by the domestic worker are not included in the definition of deployment expenses.
- (c) *Domestic work* refers to work performed in or for a household or households.
- (d) *Domestic worker or Kasambahay* refers to any person engaged in domestic work within an employment relationship such as, but not limited to, the following: general househelp, nursemaid or *yaya*, cook, gardener, or laundry person, but shall exclude any person who performs domestic work only occasionally or sporadically and not on an occupational basis.

The term shall not include children who are under foster family arrangement, and are provided access to education and given an allowance incidental to education, i.e. *baon*, transportation, school projects and school activities.

- (e) *Employer* refers to any person who engages and controls the services of a domestic worker and is party to the employment contract.

- (f) *Household* refers to the immediate members of the family or the occupants of the house that are directly provided services by the domestic worker.
- (g) *Private Employment Agency (PEA)* refers to any individual, legitimate partnership, corporation or entity licensed to engage in the recruitment and placement of domestic workers for local employment.
- (h) *Working children*, as used under this Act, refers to domestic workers who are 15 years old and above but below 18 years old.

ARTICLE II

RIGHTS AND PRIVILEGES

SECTION 5. *Standard of Treatment.* – The employer or any member of the household shall not subject a domestic worker or *kasambahay* to any kind of abuse nor inflict any form of physical violence or harassment or any act tending to degrade the dignity of a domestic worker.

SEC. 6. *Board, Lodging and Medical Attendance.* – The employer shall provide for the basic necessities of the domestic worker to include at least three adequate meals a day and humane sleeping arrangements that ensure safety.

The employer shall provide appropriate rest and assistance to the domestic worker in case of illnesses and injuries sustained during service without loss of benefits.

At no instance shall the employer withdraw or hold in abeyance the provision of these basic necessities as punishment or disciplinary action to the domestic worker.

SEC. 7. *Guarantee of Privacy.* – Respect for the privacy of the domestic worker shall be guaranteed at all times and shall extend to all forms of communication and personal effects. This guarantee equally recognizes that the domestic worker is obliged to render satisfactory service at all times.

SEC. 8. *Access to Outside Communication.* – The employer shall grant the domestic worker access to outside communication during free time: *Provided*, That in case of emergency, access to communication shall be granted even during work time. Should the domestic worker make use of the employer’s telephone or other communication facilities, the costs shall be borne by the domestic worker, unless such charges are waived by the employer.

SEC. 9. *Right to Education and Training.* – The employer shall afford the domestic worker the opportunity to finish basic education and may allow access to alternative learning systems and, as far as practicable, higher education or technical and vocational training. The employer shall adjust the work schedule of the domestic worker to allow such access to education or training without hampering the services required by the employer.

SEC. 10. *Prohibition Against Privileged Information.* – All communication and information pertaining to the employer or members of the household shall be treated as privileged and confidential, and shall not be publicly disclosed by the domestic worker during and after employment. Such privileged information shall be inadmissible in evidence except when the suit involves the employer or any member of the household in a crime against persons, property, personal liberty and security, and chastity.

ARTICLE III

PRE-EMPLOYMENT

SECTION 11. *Employment Contract.* – An employment contract shall be executed by and between the domestic worker and the employer before the commencement of the service in a language or dialect understood by both the domestic worker and the employer. The domestic worker shall be provided a copy of the duly signed employment contract which must include the following:

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- (a) Duties and responsibilities of the domestic worker;
- (b) Period of employment;
- (c) Compensation;
- (d) Authorized deductions;
- (e) Hours of work and proportionate additional payment;
- (f) Rest days and allowable leaves;
- (g) Board, lodging and medical attention;
- (h) Agreements on deployment expenses, if any;
- (i) Loan agreement;
- (j) Termination of employment; and
- (k) Any other lawful condition agreed upon by both parties.

The Department of Labor and Employment (DOLE) shall develop a model employment contract for domestic workers which shall, at all times, be made available free of charge to domestic workers, employers, representative organizations and the general public. The DOLE shall widely disseminate information to domestic workers and employers on the use of such model employment contract.

In cases where the employment of the domestic worker is facilitated through a private employment agency, the PEA shall keep a copy of all employment contracts of domestic workers and shall be made available for verification and inspection by the DOLE.

SEC. 12. *Pre-Employment Requirement.* – Prior to the execution of the employment contract, the employer may require the following from the domestic worker:

- (a) Medical certificate or a health certificate issued by a local government health officer;
- (b) Barangay and police clearance;
- (c) National Bureau of Investigation (NBI) clearance; and
- (d) Duly authenticated birth certificate or if not available, any other document showing the age of the domestic worker such as voter's identification card, baptismal record or passport.

However, Section 12(a), (b), (c) and (d) shall be standard requirements when the employment of the domestic worker is facilitated through the PEA.

The cost of the foregoing shall be borne by the prospective employer or agency, as the case may be.

SEC. 13. *Recruitment and Finder's Fees.* – Regardless of whether the domestic worker was hired through a private employment agency or a third party, no share in the recruitment or finder's fees shall be charged against the domestic worker by the said private employment agency or third party.

SEC. 14. *Deposits for Loss or Damage.* – It shall be unlawful for the employer or any other person to require a domestic worker to make deposits from which deductions shall be made for the reimbursement of loss or damage to tools, materials, furniture and equipment in the household.

SEC. 15. *Prohibition on Debt Bondage.* – It shall be unlawful for the employer or any person acting on behalf of the employer to place the domestic worker under debt bondage.

SEC. 16. *Employment Age of Domestic Workers.* – It shall be unlawful to employ any person below 15 years of age as a domestic worker. Employment of working children, as defined under this Act, shall be subject to the provisions of Section 10(A), paragraph 2 of Section 12-A, paragraph 4 of Section 12-D, and Section 13 of Republic Act No. 7610,

as amended, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.”

Working children shall be entitled to minimum wage, and all benefits provided under this Act.

Any employer who has been sentenced by a court of law of any offense against a working child under this Act shall be meted out with a penalty one degree higher and shall be prohibited from hiring a working child.

SEC. 17. Employer’s Reportorial Duties. – The employers shall register all domestic workers under their employment in the Registry of Domestic Workers in the barangay where the employer’s residence is located. The Department of the Interior and Local Government (DILG) shall, in coordination with the DOLE, formulate a registration system for this purpose.

SEC. 18. Skills Training, Assessment and Certification. – To ensure productivity and assure quality services, the DOLE, through the Technical Education and Skills Development Authority (TESDA), shall facilitate access of domestic workers to efficient training, assessment and certification based on a duly promulgated training regulation.

ARTICLE IV

EMPLOYMENT – TERMS AND CONDITIONS

SECTION 19. Health and Safety. – The employer shall safeguard the health and safety of the domestic worker in accordance with laws, rules and regulations, with due consideration of the peculiar nature of domestic work.

SEC. 20. Daily Rest Period. – The domestic worker shall be entitled to an aggregate daily rest period of eight hours per day.

SEC. 21. Weekly Rest Period. – The domestic worker shall be entitled to at least 24 consecutive hours of rest in a week. The employer and the domestic worker shall agree in writing on the schedule of the weekly rest day of the domestic worker: *Provided*, That the employer shall respect the preference of the domestic worker as to the weekly rest day when such preference is based on religious grounds. Nothing in this provision shall deprive the domestic worker and the employer from agreeing to the following:

- (a) Offsetting a day of absence with a particular rest day;
- (b) Waiving a particular rest day in return for an equivalent daily rate of pay;
- (c) Accumulating rest days not exceeding five days; or
- (d) Other similar arrangements.

SEC. 22. Assignment to Nonhousehold Work. – No domestic worker shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage rate lower than that provided for agricultural or nonagricultural workers. In such cases, the domestic worker shall be paid the applicable minimum wage.

SEC. 23. Extent of Duty. – The domestic worker and the employer may mutually agree for the former to temporarily perform a task that is outside the latter’s household for the benefit of another household. However, any liability that will be incurred by the domestic worker on account of such arrangement shall be borne by the original employer. In addition, such work performed outside the household shall entitle the domestic worker to an additional payment of not less than the existing minimum wage rate of a domestic worker. It shall be unlawful for the original employer to charge any amount from the said household where the service of the domestic worker was temporarily performed.

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SEC. 24. *Minimum Wage.* – The minimum wage of domestic workers shall not be less than the following:

- (a) Two Thousand Five Hundred Pesos (P2,500) a month for those employed in the National Capital Region (NCR);
- (b) Two Thousand Pesos (P2,000) a month for those employed in chartered cities and first class municipalities; and
- (c) One Thousand Five Hundred Pesos (P1,500) a month for those employed in other municipalities.

After one year from the effectivity of this Act, and periodically thereafter, the Regional Tripartite and Productivity Wage Boards (RTPWBs) shall review, and if proper, determine and adjust the minimum wage rates of domestic workers.

SEC. 25. *Payment of Wages.* – Payment of wages shall be made on time directly to the domestic worker to whom they are due in cash at least once a month. The employer, unless allowed by the domestic worker through a written consent, shall make no deductions from the wages other than that which is mandated by law. No employer shall pay the wages of a domestic worker by means of promissory notes, vouchers, coupons, tokens, tickets, chits, or any object other than the cash wage as provided for under this Act.

The domestic worker is entitled to a thirteenth month pay as provided for by law.

SEC. 26. *Pay Slip.* – The employer shall at all times provide the domestic worker with a copy of the pay slip containing the amount paid in cash every pay day, and indicating all deductions made, if any. The copies of the pay slip shall be kept by the employer for a period of three years.

SEC. 27. *Prohibition on Interference in the Disposal of Wages.* – It shall be unlawful for the employer to interfere with the freedom of any domestic worker to dispose of the latter's wages. The employer shall not force, compel or oblige the domestic worker to purchase merchandise, commodities or other properties from the employer or from any other person, or otherwise make use of any store or services of such employer or any other person.

SEC. 28. *Prohibition Against Withholding of Wages.* – It shall be unlawful for an employer, directly or indirectly, to withhold the wages of the domestic worker. If the domestic worker leaves without any justifiable reason, any unpaid salary for a period not exceeding 15 days shall be forfeited. Likewise, the employer shall not induce the domestic worker to give up any part of the wages by force, stealth, intimidation, threat or by any other means whatsoever.

SEC. 29. *Leave Benefits.* – A domestic worker who has rendered at least one year of service shall be entitled to an annual service incentive leave of five days with pay: *Provided*, That any unused portion of said annual leave shall not be cumulative or carried over to the succeeding years. Unused leaves shall not be convertible to cash.

SEC. 30. *Social and Other Benefits.* – A domestic worker who has rendered at least one month of service shall be covered by the Social Security System (SSS), the Philippine Health Insurance Corporation (PhilHealth), and the Home Development Mutual Fund or Pag-IBIG, and shall be entitled to all the benefits in accordance with the pertinent provisions provided by law.

Premium payments or contributions shall be shouldered by the employer. However, if the domestic worker is receiving a wage of Five Thousand Pesos (P5,000) and above per month, the domestic worker shall pay the proportionate share in the premium payments or contributions, as provided by law.

The domestic worker shall be entitled to all other benefits under existing laws.

SEC. 31. *Rescue and Rehabilitation of Abused Domestic Workers.* – Any abused or exploited domestic worker shall be immediately rescued by a municipal or city social welfare officer or a social welfare officer from the Department of Social Welfare and Development (DSWD) in coordination with the concerned barangay officials. The DSWD and

the DILG shall develop a standard operating procedure for the rescue and rehabilitation of abused domestic workers, and in coordination with the DOLE, for possible subsequent job placement.

ARTICLE V

POST EMPLOYMENT

SECTION 32. Termination of Service. – Neither the domestic worker nor the employer may terminate the contract before the expiration of the term except for grounds provided for in Sections 33 and 34 of this Act. If the domestic worker is unjustly dismissed, the domestic worker shall be paid the compensation already earned plus the equivalent of 15 days work by way of indemnity. If the domestic worker leaves without justifiable reason, any unpaid salary due not exceeding the equivalent 15 days work shall be forfeited. In addition, the employer may recover from the domestic worker costs incurred related to the deployment expenses, if any: *Provided*, That the service has been terminated within six months from the domestic worker’s employment.

If the duration of the domestic service is not determined either in stipulation or by the nature of the service, the employer or the domestic worker may give notice to end the working relationship five days before the intended termination of the service.

The domestic worker and the employer may mutually agree upon written notice to pre-terminate the contract of employment to end the employment relationship.

SEC. 33. Termination Initiated by the Domestic Worker. – The domestic worker may terminate the employment relationship at any time before the expiration of the contract for any of the following causes:

- (a) Verbal or emotional abuse of the domestic worker by the employer or any member of the household;
- (b) Inhuman treatment including physical abuse of the domestic worker by the employer or any member of the household;
- (c) Commission of a crime or offense against the domestic worker by the employer or any member of the household;
- (d) Violation by the employer of the terms and conditions of the employment contract and other standards set forth under this law;
- (e) Any disease prejudicial to the health of the domestic worker, the employer, or member/s of the household; and
- (f) Other causes analogous to the foregoing.

SEC. 34. Termination Initiated by the Employer. – An employer may terminate the services of the domestic worker at any time before the expiration of the contract, for any of the following causes:

- (a) Misconduct or willful disobedience by the domestic worker of the lawful order of the employer in connection with the former’s work;
- (b) Gross or habitual neglect or inefficiency by the domestic worker in the performance of duties;
- (c) Fraud or willful breach of the trust reposed by the employer on the domestic worker;
- (d) Commission of a crime or offense by the domestic worker against the person of the employer or any immediate member of the employer’s family;
- (e) Violation by the domestic worker of the terms and conditions of the employment contract and other standards set forth under this law;
- (f) Any disease prejudicial to the health of the domestic worker, the employer, or member/s of the household; and
- (g) Other causes analogous to the foregoing.

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SEC. 35. *Employment Certification.* – Upon the severance of the employment relationship, the employer shall issue the domestic worker within five days from request a certificate of employment indicating the nature, duration of the service and work performance.

ARTICLE VI

PRIVATE EMPLOYMENT AGENCIES

SECTION 36. *Regulation of Private Employment Agencies (PEAs).* – The DOLE shall, through a system of licensing and regulation, ensure the protection of domestic workers hired through the PEAs.

The PEA shall be jointly and severally liable with the employer for all the wages, wage-related benefits, and other benefits due a domestic worker.

The provision of Presidential Decree No. 442, as amended, otherwise known as the *Labor Code of the Philippines*, on qualifications of the PEAs with regard to nationality, networth, owners and officers, office space and other requirements, as well as nontransferability of license and commission of prohibited practices, shall apply.

In addition, PEAs shall have the following responsibilities:

- (a) Ensure that domestic workers are not charged or levied any recruitment or placement fees;
- (b) Ensure that the employment agreement between the domestic worker and the employer stipulates the terms and conditions of employment and all the benefits prescribed by this Act;
- (c) Provide a pre-employment orientation briefing to the domestic worker and the employer about their rights and responsibilities in accordance with this Act;
- (d) Keep copies of employment contracts and agreements pertaining to recruited domestic workers which shall be made available during inspections or whenever required by the DOLE or local government officials;
- (e) Assist domestic workers with respect to complaints or grievances against their employers; and
- (f) Cooperate with government agencies in rescue operations involving abused or exploited domestic workers.

ARTICLE VII

SETTLEMENT OF DISPUTES

SECTION 37. *Mechanism for Settlement of Disputes.* – All labor-related disputes shall be elevated to the DOLE Regional Office having jurisdiction over the workplace without prejudice to the filing of a civil or criminal action in appropriate cases. The DOLE Regional Office shall exhaust all conciliation and mediation efforts before a decision shall be rendered.

Ordinary crimes or offenses committed under the Revised Penal Code and other special penal laws by either party shall be filed with the regular courts.

ARTICLE VIII

SPECIAL PROVISIONS

SECTION 38. *Information Program.* – The DOLE shall, in coordination with the DILG, the SSS, the PhilHealth and Pag-IBIG develop and implement a continuous information dissemination program on the provisions of this Act, both at the national and local level, immediately after the enactment of this law.

SEC. 39. *“Araw Ng Mga Kasambahay”.* – The date upon which the President shall approve this *Domestic Workers Act* shall be designated as the *Araw ng mga Kasambahay*.

ARTICLE IX

PENAL AND MISCELLANEOUS PROVISIONS

SECTION 40. *Penalty.* – Any violation of the provisions of this Act declared unlawful shall be punishable with a fine of not less than Ten Thousand Pesos (P10,000) but not more than Forty Thousand Pesos (P40,000) without prejudice to the filing of appropriate civil or criminal action by the aggrieved party.

SEC. 41. *Transitory Provision; Non-Diminution of Benefits.* – All existing arrangements between a domestic worker and the employer shall be adjusted to conform to the minimum standards set by this Act within a period of 60 days after the effectivity of this Act: *Provided*, That adjustments pertaining to wages shall take effect immediately after the determination and issuance of the appropriate wage order by the RTWPBs: *Provided, further*, That nothing in this Act shall be construed to cause the diminution or substitution of any benefits and privileges currently enjoyed by the domestic worker hired directly or through an agency.

SEC. 42. *Implementing Rules and Regulations.* – Within 90 days from the effectivity of this Act, the Secretary of Labor and Employment, the Secretary of Social Welfare and Development, the Secretary of the Interior and Local Government, and the Director General of the Philippine National Police, in coordination with other concerned government agencies and accredited nongovernment organizations (NGOs) assisting domestic workers, shall promulgate the necessary rules and regulations for the effective implementation of this Act.

ARTICLE X

FINAL PROVISIONS

SECTION 43. *Separability Clause.* – If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SEC. 44. *Repealing Clause.* – All articles or provisions of Chapter III (Employment of Househelpers) of Presidential Decree No. 442, as amended and renumbered by Republic Act No. 10151 are hereby expressly repealed. All laws, decrees, executive orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 45. *Effectivity Clause.* – This Act shall take effect 15 days after its complete publication in the Official Gazette or in at least two national newspapers of general circulation.

REPUBLIC ACT No. 10364

AN ACT EXPANDING REPUBLIC ACT No. 9208, ENTITLED “AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER PURPOSES”

Approved on February 6, 2013

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 “*Expanded Anti-Trafficking in Persons Act of 2012.*”

SEC. 2. Section 2 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 2. Declaration of Policy. – It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families, United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

SEC. 3. Section 3 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 3. Definition of Terms. – As used in this Act:

(a) *Trafficking in Persons* – refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding paragraph.

(b) *Child* – refers to a person below 18 years of age or one who is over 18 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) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

(d) *Forced Labor* – refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception including any work or service extracted from any person under the menace of penalty.

- (e) *Slavery* – refers to the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- (f) *Involuntary Servitude* – refers to a condition of enforced and compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that if he or she did not enter into or continue in such condition, he or she or another person would suffer serious harm or other forms of abuse or physical restraint, or threat of abuse or harm, or coercion including depriving access to travel documents and withholding salaries, or the abuse or threatened abuse of the legal process.
- (g) *Sex Tourism* – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.
- (h) *Sexual Exploitation* – refers to participation by a person in prostitution, pornography or the production of pornography, in exchange for money, profit or any other consideration or where the participation is caused or facilitated by any means of intimidation or threat, use of force, or other forms of coercion, abduction, fraud, deception, debt bondage, abuse of power or of position or of legal process, taking advantage of the vulnerability of the person, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or in sexual intercourse or lascivious conduct caused or facilitated by any means as provided in this Act.
- (i) *Debt Bondage* – refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.
- (j) *Pornography* – refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.
- (k) *Council* – shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

SEC. 4. Section 4 of Republic Act No. 9208 is hereby amended to read as follows:

Sec. 4. Acts of Trafficking in Persons. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

- (a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;
- (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
- (e) To maintain or hire a person to engage in prostitution or pornography;
- (f) To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (g) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (h) To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;

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- (i) To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive or adopt a child to engage in armed activities in the Philippines or abroad;
- (j) To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide or receive a person by means defined in Section 3 of this Act for purposes of forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either:
 - (1) To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or
 - (2) To abuse or threaten the use of law or the legal processes; and
- (k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of baring and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:
 - (1) All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage and forced labor, including recruitment of children for use in armed conflict;
 - (2) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
 - (3) The use, procuring or offering of a child for the production and trafficking of drugs; and
 - (4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals; and
- (l) To organize or direct other persons to commit the offenses defined as acts of trafficking under this Act.

SEC. 5. A new Section 4-A is hereby inserted in Republic Act No. 9208, to read as follows:

SEC. 4-A. Attempted Trafficking in Persons. – Where there are acts to initiate the commission of a trafficking offense but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons. As such, an attempt to commit any of the offenses enumerated in Section 4 of this Act shall constitute attempted trafficking in persons.

In cases where the victim is a child, any of the following acts shall also be deemed as attempted trafficking in persons:

- (a) Facilitating the travel of a child who travels alone to a foreign country or territory without valid reason therefor and without the required clearance or permit from the Department of Social Welfare and Development, or a written permit or justification from the child's parent or legal guardian;
- (b) Executing, for a consideration, an affidavit of consent or a written consent for adoption;
- (c) Recruiting a woman to bear a child for the purpose of selling the child;
- (d) Simulating a birth for the purpose of selling the child; and
- (e) Soliciting a child and acquiring the custody thereof through any means from among hospitals, clinics, nurseries, daycare centers, refugee or evacuation centers, and low-income families, for the purpose of selling the child.

SEC. 6. A new Section 4-B is hereby inserted in Republic Act No. 9208, to read as follows:

SEC. 4-B. Accomplice Liability. – Whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts defined in this Act shall be punished in accordance with the provisions of Section 10(c) of this Act.

SEC. 7. A new Section 4-C is hereby inserted in Republic Act No. 9208, to read as follows:

SEC. 4-C. Accessories. – Whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices, take part in its commission in any of the following manners:

- (a) By profiting themselves or assisting the offender to profit by the effects of the crime;
- (b) By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;

- (c) By harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions or is known to be habitually guilty of some other crime.

Acts defined in this provision shall be punished in accordance with the provision of Section 10(d) as stated thereto.

SEC. 8. Section 5 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 5. *Acts that Promote Trafficking in Persons.* – The following acts which promote or facilitate trafficking in persons, shall be unlawful:

- (a) xxx
- (b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
- (c) xxx
- (d) xxx
- (e) xxx
- (f) xxx
- (g) xxx
- (h) To tamper with, destroy, or cause the destruction of evidence, or to influence or attempt to influence witnesses, in an investigation or prosecution of a case under this Act;
- (i) To destroy, conceal, remove, confiscate or possess, or attempt to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person’s liberty to move or travel in order to maintain the labor or services of that person; or
- (j) To utilize his or her office to impede the investigation, prosecution or execution of lawful orders in a case under this Act.

SEC. 9. Section 6 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 6. *Qualified Trafficking in Persons.* – Violations of Section 4 of this Act shall be considered as qualified trafficking:

x x x

- (d) When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

x x x

- (f) When the offender is a member of the military or law enforcement agencies;
- (g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS);
- (h) When the offender commits one or more violations of Section 4 over a period of 60 or more days, whether those days are continuous or not; and
- (i) When the offender directs or through another manages the trafficking victim in carrying out the exploitative purpose of trafficking.

SEC. 10. Section 7 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 7. *Confidentiality.* – At any stage of the investigation, rescue, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners, as well as parties

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to the case, shall protect the right to privacy of the trafficked person. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or any other information tending to establish the identity of the trafficked person and his or her family shall not be disclosed to the public.

It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or electronic information technology to cause publicity of the name, personal circumstances, or any information tending to establish the identity of the trafficked person except when the trafficked person in a written statement duly notarized knowingly, voluntarily and willingly waives said confidentiality.

Law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners shall be trained on the importance of maintaining confidentiality as a means to protect the right to privacy of victims and to encourage victims to file complaints.

SEC. 11. Section 8 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 8. *Initiation and Prosecution of Cases.*

- (a) *Initiation of Investigation.* – Law enforcement agencies are mandated to immediately initiate investigation and counter-trafficking-intelligence gathering upon receipt of statements or affidavit from victims of trafficking, migrant workers, or their families who are in possession of knowledge or information about trafficking in persons cases.
- (b) *Prosecution of Cases.* – Any person who has personal knowledge of the commission of any offense under this Act, such as the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.
- (c) *Affidavit of Desistance.* – Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal.

Any act involving the means provided in this Act or any attempt thereof for the purpose of securing an Affidavit of Desistance from the complainant shall be punishable under this Act.

SEC. 12. Section 10 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 10. *Penalties and Sanctions.* – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of 20 years and a fine of not less than One Million Pesos (P1 million) but not more than Two Million Pesos (P2 million);
- (b) Any person found guilty of committing any of the acts enumerated in Section 4-A of this Act shall suffer the penalty of imprisonment of 15 years and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million);
- (c) Any person found guilty of Section 4-B of this Act shall suffer the penalty of imprisonment of 15 years and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million);

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment agency involved in trafficking. The license of a recruitment agency which trafficked a child shall be automatically revoked.

- (d) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of 15 years and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million);
- (e) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two Million Pesos (P2 million) but not more than Five Million Pesos (P5 million);

- (f) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six years and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million);
- (g) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;
- (h) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;
- (i) If the offender is a foreigner, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country;
- (j) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His or her retirement and other benefits shall likewise be forfeited; and
- (k) Conviction, by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

SEC. 13. Section 11 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 11. Use of Trafficked Persons. – Any person who buys or engages the services of a trafficked person for prostitution shall be penalized with the following: *Provided*, That the Probation Law (Presidential Decree No. 968) shall not apply:

- (a) *Prision Correccional* in its maximum period to *prision mayor* or six years to 12 years imprisonment and a fine of not less than Fifty Thousand Pesos (P50,000) but not more than One Hundred Thousand Pesos (P100,000): *Provided, however*, That the following acts shall be exempted thereto:
 - (1) If an offense under paragraph (a) involves sexual intercourse or lascivious conduct with a child, the penalty shall be *reclusion temporal* in its medium period to *reclusion perpetua* or 17 years to 40 years imprisonment and a fine of not less than Five Hundred Thousand Pesos (P500,000) but not more than One Million Pesos (P1 million);
 - (2) If an offense under paragraph (a) involves carnal knowledge of, or sexual intercourse with, a male or female trafficking victim and also involves the use of force or intimidation, to a victim deprived of reason or to an unconscious victim, or a victim under 12 years of age, instead of the penalty prescribed in the subparagraph above the penalty shall be a fine of not less than One Million Pesos (P1 million) but not more than Five Million Pesos (P5 million) and imprisonment of *reclusion perpetua* or 40 years imprisonment with no possibility of parole; except that if a person violating paragraph (a) of this section knows the person that provided prostitution services is in fact a victim of trafficking, the offender shall not be likewise penalized under this section but under Section 10 as a person violating Section 4; and if in committing such an offense, the offender also knows a qualifying circumstance for trafficking, the offender shall be penalized under Section 10 for qualified trafficking. If in violating this section the offender also violates Section 4, the offender shall be penalized under Section 10 and, if applicable, for qualified trafficking instead of under this section;
- (b) *Deportation.* – If a foreigner commits any offense described by paragraph (1) or (2) of this section or violates any pertinent provision of this Act as an accomplice or accessory to, or by attempting any such offense, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country; and
- (c) *Public Official.* – If the offender is a public official, he or she shall be dismissed from service and shall suffer perpetual absolute disqualification to hold public office, in addition to any imprisonment or fine received pursuant to any other provision of this Act.

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SEC. 14. Section 12 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 12. *Prescriptive Period.* – Trafficking cases under this Act shall prescribe in 10 years: *Provided, however,* That trafficking cases committed by a syndicate or in a large scale as defined under Section 6, or against a child, shall prescribe in 20 years.

The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage, or in the case of a child victim, from the day the child reaches the age of majority, and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

SEC. 15. Section 16 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 16. *Programs that Address Trafficking in Persons.* – The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:

(a) Department of Foreign Affairs (DFA) – shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs. It shall provide Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against his or her traffickers, represent his or her interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or regular immigration status as may be allowed or provided for by the host country. The DFA shall repatriate trafficked Filipinos with the consent of the victims.

The DFA shall take necessary measures for the efficient implementation of the Electronic Passporting System to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

In coordination with the Department of Labor and Employment, it shall provide free temporary shelters and other services to Filipino victims of trafficking overseas through the migrant workers and other overseas Filipinos resource centers established overseas under Republic Act No. 8042, as amended.

(b) Department of Social Welfare and Development (DSWD) – shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community. It shall establish free temporary shelters, for the protection and housing of trafficked persons to provide the following basic services to trafficked persons:

- (1) Temporary housing and food facilities;
- (2) Psychological support and counseling;
- (3) 24-hour call center for crisis calls and technology-based counseling and referral system;
- (4) Coordination with local law enforcement entities; and
- (5) Coordination with the Department of Justice, among others.

The DSWD must conduct information campaigns in communities and schools teaching parents and families that receiving consideration in exchange for adoption is punishable under the law. Furthermore, information campaigns must be conducted with the police that they must not induce poor women to give their children up for adoption in exchange for consideration.

(c) Department of Labor and Employment (DOLE) – shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.

(d) Department of Justice (DOJ) – shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.

- (e) Philippine Commission on Women (PCW) – shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women’s issues.
- (f) Bureau of Immigration (BI) – shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.
- (g) Philippine National Police (PNP) and National Bureau of Investigation (NBI) – shall be the primary law enforcement agencies to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. They shall closely coordinate with each other and with other law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. They shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.
- (h) Philippine Overseas Employment Administration (POEA) and Overseas Workers and Welfare Administration (OWWA) – POEA shall implement Pre-Employment Orientation Seminars (PEOS) while Pre-Departure Orientation Seminars (PDOS) shall be conducted by the OWWA. It shall likewise formulate a system of providing free legal assistance to trafficked persons in coordination with the DFA.

The POEA shall create a blacklist of recruitment agencies, illegal recruiters and persons facing administrative, civil and criminal complaints for trafficking filed in the receiving country and/or in the Philippines and those agencies, illegal recruiters and persons involved in cases of trafficking who have been rescued by the DFA and DOLE in the receiving country or in the Philippines even if no formal administrative, civil or criminal complaints have been filed: *Provided*, That the rescued victims shall execute an affidavit attesting to the acts violative of the anti-trafficking law. This blacklist shall be posted in conspicuous places in concerned government agencies and shall be updated bi-monthly.

The blacklist shall likewise be posted by the POEA in the shared government information system, which is mandated to be established under Republic Act No. 8042, as amended.

The POEA and OWWA shall accredit NGOs and other service providers to conduct PEOS and PDOS, respectively. The PEOS and PDOS should include the discussion and distribution of the blacklist.

The license or registration of a recruitment agency that has been blacklisted may be suspended by the POEA upon a review of the complaints filed against said agency.

- (i) Department of the Interior and Local Government (DILG) – shall institute a systematic information and prevention campaign in coordination with pertinent agencies of government as provided for in this Act. It shall provide training programs to LGUs, in coordination with the Council, in ensuring wide understanding and application of this Act at the local level.
- (j) Commission on Filipinos Overseas – shall conduct pre-departure counseling services for Filipinos in intermarriages. It shall develop a system for accreditation of NGOs that may be mobilized for purposes of conducting pre-departure counseling services for Filipinos in intermarriages. As such, it shall ensure that the counselors contemplated under this Act shall have the minimum qualifications and training of guidance counselors as provided for by law.

It shall likewise assist in the conduct of information campaigns against trafficking in coordination with LGUs, the Philippine Information Agency (PIA), and NGOs.

- (k) Local Government Units (LGUs) – shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with the DILG, PIA, Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community-based initiatives which address the trafficking in persons.

In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people’s organizations (POs), civic organizations and other volunteer groups.

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SEC. 16. A new Section 16-A is hereby inserted into Republic Act No. 9208, to read as follows:

SEC. 16-A. *Anti-Trafficking in Persons Database.* – An anti-trafficking in persons central database shall be established by the Inter-Agency Council Against Trafficking created under Section 20 of this Act. The Council shall submit a report to the President of the Philippines and to Congress, on or before January 15 of every year, with respect to the preceding year's programs and data on trafficking-related cases.

All government agencies tasked under the law to undertake programs and render assistance to address trafficking in persons shall develop their respective monitoring and data collection systems, and databases, for purposes of ensuring efficient collection and storage of data on cases of trafficking in persons handled by their respective offices. Such data shall be submitted to the Council for integration in a central database system.

For this purpose, the Council is hereby tasked to ensure the harmonization and standardization of databases, including minimum data requirements, definitions, reporting formats, data collection systems, and data verification systems. Such databases shall have, at the minimum, the following information:

- (a) The number of cases of trafficking in persons, sorted according to status of cases, including the number of cases being investigated, submitted for prosecution, dropped, and filed and/or pending before the courts and the number of convictions and acquittals;
- (b) The profile/information on each case;
- (c) The number of victims of trafficking in persons referred to the agency by destination countries/areas and by area of origin; and
- (d) Disaggregated data on trafficking victims and the accused/defendants.

SEC. 17. Section 17 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 17. *Legal Protection to Trafficked Persons.* – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law.

SEC. 18. A new Section 17-A is hereby inserted into Republic Act No. 9208, to read as follows:

SEC. 17-A. *Temporary Custody of Trafficked Victims.* – The rescue of victims should be done as much as possible with the assistance of the DSWD or an accredited NGO that services trafficked victims. A law enforcement officer, on a reasonable suspicion that a person is a victim of any offense defined under this Act including attempted trafficking, shall immediately place that person in the temporary custody of the local social welfare and development office, or any accredited or licensed shelter institution devoted to protecting trafficked persons after the rescue.

SEC. 19. A new Section 17-B is hereby inserted into Republic Act No. 9208, to read as follows:

SEC. 17-B. *Irrelevance of Past Sexual Behavior, Opinion Thereof or Reputation of Victims and of Consent of Victims in Cases of Deception, Coercion and Other Prohibited Means.* – The past sexual behavior or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behavior, or to prove the predisposition, sexual or otherwise, of a trafficked person. Furthermore, the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means set forth in Section 3(a) of this Act has been used.

SEC. 20. A new Section 17-C is hereby inserted into Republic Act No. 9208, to read as follows:

SEC. 17-C. *Immunity from Suit, Prohibited Acts and Injunctive Remedies.* – No action or suit shall be brought, instituted or maintained in any court or tribunal or before any other authority against any: (a) law enforcement officer; (b) social worker; or (c) person acting in compliance with a lawful order from any of the above, for lawful acts done or statements made during an authorized rescue operation, recovery or rehabilitation/intervention, or an investigation or prosecution of an anti-trafficking case: *Provided*, That such acts shall have been made in good faith.

The prosecution of retaliatory suits against victims of trafficking shall be held in abeyance pending final resolution and decision of criminal complaint for trafficking.

It shall be prohibited for the DFA, the DOLE, and the POEA officials, law enforcement officers, prosecutors and judges to urge complainants to abandon their criminal, civil and administrative complaints for trafficking.

The remedies of injunction and attachment of properties of the traffickers, illegal recruiters and persons involved in trafficking may be issued *motu proprio* by judges.

SEC. 21. Section 20 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 20. *Inter-Agency Council Against Trafficking.* – There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

- (a) Secretary, Department of Foreign Affairs;
- (b) Secretary, Department of Labor and Employment;
- (c) Secretary, Department of the Interior and Local Government;
- (d) Administrator, Philippine Overseas Employment Administration;
- (e) Commissioner, Bureau of Immigration;
- (f) Chief, Philippine National Police;
- (g) Chairperson, Philippine Commission on Women;
- (h) Chairperson, Commission on Filipinos Overseas;
- (i) Executive Director, Philippine Center for Transnational Crimes; and
- (j) Three representatives from NGOs, who shall include one representative each from among the sectors representing women, overseas Filipinos, and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three years.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

SEC. 22. Section 22 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 22. *Secretariat to the Council.* – The Department of Justice shall establish the necessary Secretariat for the Council.

The secretariat shall provide support for the functions and projects of the Council. The secretariat shall be headed by an executive director, who shall be appointed by the Secretary of the DOJ upon the recommendation of the Council. The executive director must have adequate knowledge on, training and experience in the phenomenon of and issues involved in trafficking in persons and in the field of law, law enforcement, social work, criminology, or psychology.

The executive director shall be under the supervision of the Inter-Agency Council Against Trafficking through its Chairperson and Co-Chairperson, and shall perform the following functions:

- (a) Act as secretary of the Council and administrative officer of its secretariat;
- (b) Advise and assist the Chairperson in formulating and implementing the objectives, policies, plans and programs of the Council, including those involving mobilization of government offices represented in the Council as well as other relevant government offices, task forces, and mechanisms;
- (c) Serve as principal assistant to the Chairperson in the overall supervision of council administrative business;
- (d) Oversee all council operational activities;
- (e) Ensure an effective and efficient performance of council functions and prompt implementation of council objectives, policies, plans and programs;
- (f) Propose effective allocations of resources for implementing council objectives, policies, plans and programs;

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- (g) Submit periodic reports to the Council on the progress of council objectives, policies, plans and programs;
- (h) Prepare annual reports of all council activities; and
- (i) Perform other duties as the Council may assign.

SEC. 23. A new Section 26-A is hereby inserted into Republic Act No. 9208, to read as follows:

SEC. 26-A. *Extra-Territorial Jurisdiction.* – The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, the crime being a continuing offense, having been commenced in the Philippines and other elements having been committed in another country, if the suspect or accused:

- (a) Is a Filipino citizen; or
- (b) Is a permanent resident of the Philippines; or
- (c) Has committed the act against a citizen of the Philippines.

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the Philippines, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Secretary of Justice.

The government may surrender or extradite persons accused of trafficking in the Philippines to the appropriate international court if any, or to another State pursuant to the applicable extradition laws and treaties.

SEC. 24. Section 28 of Republic Act No. 9208 is hereby amended, to read as follows:

SEC. 28. *Funding.* – The amount necessary to implement the provisions of this Act shall be charged against the current year's appropriations of the Inter-Agency Council Against Trafficking under the budget of the DOJ and the appropriations of the other concerned departments. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

SEC. 25. A new Section 28-A is hereby inserted into Republic Act No. 9208, to read as follows:

SEC. 28-A. *Additional Funds for the Council.* – The amount collected from every penalty, fine or asset derived from any violation of this Act shall be earmarked as additional funds for the use of the Council. The fund may be augmented by grants, donations and endowment from various sources, domestic or foreign, for purposes related to their functions, subject to the existing accepted rules and regulations of the Commission on Audit.

SEC. 26. Section 32 of Republic Act No. 9208 of the Repealing Clause is hereby amended to read as follows:

SEC. 32. *Repealing Clause.* – Article 202 of the Revised Penal Code, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly: *Provided*, That this Act shall not in any way amend or repeal the provisions of Republic Act No. 7610, otherwise known as the 'Special Protection of Child Against Child Abuse, Exploitation and Discrimination Act.'

SEC. 27. Section 33 of Republic Act No. 9208 is hereby amended to read as follows:

SEC. 33. *Effectivity.* – This Act shall take effect 15 days following its complete publication in at least two newspapers of general circulation.

REPUBLIC ACT No. 10398
AN ACT DECLARING NOVEMBER TWENTY-FIVE OF EVERY YEAR AS
“NATIONAL CONSCIOUSNESS DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN AND CHILDREN”
Approved on March 19, 2013

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

SECTION 1. In recognition of the need to establish a comprehensive and structured campaign for national consciousness on anti-violence against women, November 25 of every year is hereby declared as the “National Consciousness Day for the Elimination of Violence Against Women and Children.”

SEC. 2. The following activities shall be undertaken in observance of this occasion:

- (a) Heads of government agencies and instrumentalities, government-owned and controlled corporations, local government units and employers in the private sector shall, together with their employees, organize, engage or participate in activities designed to raise public awareness on the problem of violence, and the elimination of all forms of violence, against women and children.
- (b) The Philippine Information Agency shall be mandated to allocate a minimum of one hour airtime for programs exclusively raising public awareness on the problem of violence against women and children and the elimination of all forms of violence against women and children. Relative thereto, all television and radio networks nationwide are encouraged to allocate airtime for the said programs.
- (c) Publishers of local newspapers and magazines are encouraged to highlight the problem of violence, and the elimination of all forms of violence, against women and children.
- (d) The Department of Education, the Commission on Higher Education and the Technical Education and Skills Development Authority, in coordination with the Philippine Commission on Women (PCW) and the Department of Social Welfare and Development (DSWD), women non-governmental organizations (NGOs) and other NGOs and people’s organizations advocating for women’s and children’s human rights, shall lead public and private school communities at all levels in organizing consciousness-raising activities on the problem of violence, and the elimination of all forms of violence, against women and children.

SEC. 3. The National Statistics Office, the Philippine National Police, the DSWD, the Department of Labor and Employment, the Department of Foreign Affairs and all Philippine embassies and consulates shall, in coordination with the PCW, undertake the data gathering and systematization of a database on all forms of violence against women and children, including Filipino women and children working and/or residing abroad. These agencies shall consolidate their findings and make a report to the public on the statistics and status of violence against women and children every November 25 of each year.

SEC. 4. The PCW and the Inter-Agency Council Against Trafficking (IACAT), constituted under Section 20 of Republic Act No. 9208 or the “Anti-Trafficking in Persons Act of 2003” and the Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC), constituted under Section 39 of Republic Act No. 9262 or the “Anti-Violence Against Women and Their Children Act of 2004,” shall coordinate, monitor and evaluate the activities outlined in the annual 18-day campaign at the national level.

At the regional level, the Regional Inter-Agency Committee on Anti-Trafficking-Violence Against Women and Their Children (RIACAT-VAWC) shall likewise coordinate, monitor and evaluate said activities for the annual campaign at the provincial, city, municipal and barangay levels. They shall also make an annual report of their findings to be reported to the public every November 25.

The PCW, the IACAT and the IAC-VAWC shall likewise coordinate and tap the expertise of other government agencies and institutions like the Movie and Television Review and Classification Board (MTRCB) and the Overseas

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Workers Welfare Administration (OWWA), as well as other private sector organizations in the implementation of activities for the 18-day campaign.

SEC. 5. Funds for the implementation of the aforestated activities, programs and projects shall be taken out of the 5 percent Gender and Development budget allocated to all government agencies and local government units, as mandated by Section 36 of Republic Act No. 9710 or "The Magna Carta of Women."

SEC. 6. If, for any reason, any section or provision of this Act is held to be unconstitutional or invalid, the validity of other sections herein shall not be affected thereby.

SEC. 7. This Act shall take effect 15 days following its publication in two national newspapers of general circulation.

REPUBLIC ACT No. 10410

AN ACT RECOGNIZING THE AGE FROM ZERO (0) TO EIGHT (8) YEARS AS THE FIRST CRUCIAL STAGE OF EDUCATIONAL DEVELOPMENT AND STRENGTHENING THE EARLY CHILDHOOD CARE AND DEVELOPMENT SYSTEM, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Approved on March 26, 2013

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 “*Early Years Act (EYA) of 2013.*”

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State to promote the rights of children to survival, development and special protection with full recognition of the nature of childhood and as well as the need to provide developmentally appropriate experiences to address their needs; and to support parents in their roles as primary caregivers and as their children’s first teachers. Further, the State hereby recognizes the age from zero to eight years as the first crucial stage of educational development of which the age from zero to four years shall be the responsibility of the Early Childhood Care and Development (ECCD) Council. Therefore, the responsibility to help develop children in the formative years between age five to eight years shall be with the Department of Education (DepED).

The State shall institutionalize a National System for Early Childhood Care and Development (ECCD) that is comprehensive, integrative and sustainable, that involves multi-sectoral and inter-agency collaboration at the national and local levels among government; among service providers, families and communities, and among the public and private sectors, non-government organizations (NGOs); professional associations and academic institutions.

The System shall promote the inclusion of children with special needs, provide for reasonable accommodation and accessible environments for children with disabilities and advocate respect for cultural and linguistic diversity, including the use of Filipino Sign Language as the visual language of the deaf community. It shall be anchored on complementary strategies for ECCD that include service delivery for children from age zero to four years, educating parents and caregivers, encouraging the active involvement of parents and communities in ECCD programs, raising awareness about the important efforts that improve the quality of life for young children and families.

SEC. 3. Objectives. – The National ECCD System shall pursue the following objectives:

- (a) To achieve improved infant and child survival rates by ensuring that adequate health and nutrition programs are accessible to young children and their parents, from the prenatal period throughout the early childhood years;
- (b) To enhance the physical-motor, socio-emotional, cognitive, language, psychological and spiritual development of young children;
- (c) To facilitate a smooth transition from care and education provided at home to community or school-based setting and to kindergarten;
- (d) To ensure that young children are adequately prepared for the formal learning system that begins at kindergarten;
- (e) To establish an efficient system for early identification, prevention, referral and intervention for the wide range of children with special needs from age zero to four years;
- (f) To upgrade and update the capabilities of service providers and their supervisors to comply with quality standards for various ECCD programs;

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- (g) To reinforce the role of parents and other caregivers as the primary caregivers and educators of their children especially from age zero to four years;
- (h) To enhance and sustain the efforts of communities to promote ECCD programs and ensure that special support is provided for poor, disadvantaged and linguistic minority communities;
- (i) To improve the quality standards of public and private ECCD programs through, but not limited to, a registration and credential system for ECCD service providers and facilities;
- (j) To ensure that the education of persons, and in particular children, who are blind, deaf or deafblind, are conducted in the most appropriate languages, modes and means of communication for the individual, and in environments which maximize academic and social development; and
- (k) To employ teachers, including teachers with disabilities, who are qualified in sign language and/or braille, and to train professionals and staff who work at all levels of education.

SEC. 4. Definitions. – The following terms are defined as follows:

- (a) *Early Childhood Care and Development (ECCD) System* shall refer to the full range of health, nutrition, early education and social services development programs that provide for the basic holistic needs of young children from age zero to four years; and to promote their optimum growth and development.

These programs shall include:

- (1) *Center-based programs*, such as the day care service established under Republic Act No. 6972, otherwise known as the “Barangay – Level Total Development and Protection of Children Act,” and hereinafter referred to as the child development service, community or church-based early childhood education programs initiated by NGOs or people’s organizations, workplace-related child care and education programs, child-minding centers, health centers and stations; and
 - (2) *Home-based programs*, such as the neighborhood-based play groups, family child care programs, parent education and home visiting programs.
- (b) *ECCD Service Providers* shall include the various professionals, paraprofessionals and volunteer caregivers who are directly responsible for the care and education of young children from age zero to four years through the various centers and home-based programs. They shall include, but shall not be limited to, day care workers hereinafter referred to as child development workers, child development teachers, teacher-aides, rural health midwives, social workers, community health workers, barangay nutrition scholars, parent effectiveness service volunteers, and family day care providers.
 - (c) *ECCD Curriculum* shall refer to the developmentally-appropriate educational objectives and practices, programs of activities, organized learning experiences, recommended learning materials and appropriate assessment for children from age zero to four years that are implemented by service providers through center and home-based programs. It shall consist of national program goals and guidelines, instructional objectives, and content outlines that are age-appropriate, individually appropriate and culturally relevant.
 - (d) *Parent Education* shall refer to the various formal and alternative means of providing parents with information, skills, and support systems to assist them in their roles as their children’s primary caregivers and educators. These include public and private parent education programs linked to center, home and media-based child care and education programs.

SEC. 5. System Framework and Components. – The ECCD System shall ensure that the National ECCD Program is implemented in accordance with quality standards for accreditation and for this purpose there shall be established a National ECCD Monitoring and Evaluation Framework. The ECCD System shall include the following components:

- (a) **ECCD Curriculum.** – The curriculum shall focus on children’s total development and take into account age, individual and socio-cultural appropriateness. It shall promote the delivery of complementary and integrative

services for health, nutrition, early childhood education, sanitation and cultural activities. It shall use the child's first language as the medium of instruction;

- (b) **Parent Education and Involvement, Advocacy and Mobilization of Communities.** – This component shall harness and develop parents' strengths as providers of ECCD programs at home, as active partners of other stakeholders, as advocates for community concerns that affect children, and as pillars of support for local and national ECCD programs through community organization efforts;
- (c) **Human Resource Development Program.** – The program shall establish mechanisms for the systematic professionalization of ECCD service providers through enrolment in educational program in site-based or distance education modes, through pre-service or in-service training including continuing education programs, whereby a registration and credential system shall be developed in the ECCD System; and
- (d) **ECCD Management.** – This component shall consist of a continuing process of planning, implementation, supervision, financial management, monitoring, evaluation and reporting to persons concerned and shall encourage the active involvement of and build the capabilities of service providers, parents and local government officials to sustain the program.

Sec. 6. Expanding the ECCD System. – The National ECCD System shall henceforth apply to all provinces, cities, municipalities and barangays as may be determined by the ECCD Council to achieve universal ECCD coverage for all children from age zero to four years.

Sec. 7. Implementing Arrangements and Operational Structures. – The implementation of the National ECCD System shall be the responsibility of the ECCD Council.

- (a) **Responsibilities of the ECCD Council.** – The ECCD Council shall be responsible for establishing national standards, developing policies and programs, ensuring compliance thereof providing technical assistance and support to the ECCD service providers in consultation with coordinating committees at the provincial, city, municipal and barangay levels.

The Department of Education (DepED), the Department of Social Welfare and Development (DSWD), the Department of Health (DOH), the National Nutrition Council (NNC) and the Union of Local Authorities of the Philippines (HEAP) shall meet in an annual workshop to prepare work and financial plans that will coordinate their technical assistance and support for the National ECCD Program. They shall observe existing implementing guidelines that ensure consistency in integrated service delivery within the National ECCD System, as follows:

- (1) The DepED shall recognize the National ECCD Program as the foundation of the learning continuum and shall promote it for all children from age zero to four years; and
 - (2) The DepED, the DSWD, the DOH and the NNC shall provide continuing professional development program support, supplementary learning materials, reference materials, supplemental nutrition and health care services.
- (b) **Responsibilities of Local Government Units.** – Local Government Units (LGUs) shall include allocations from their Special Education Fund (SEF) and Gender and Development (GAD) Fund in addition to other local funds to be utilized for the following purposes:
 - (1) Support the implementation of their ECCD Program;
 - (2) Organize and support parent cooperatives to establish community-based ECCD programs;
 - (3) Provide counterpart funds for the continuing professional development of their ECCD public service providers; and
 - (4) Provide the facilities for the conduct of their ECCD Program.
 - (c) **Responsibilities of Families and Communities.** – Families and communities shall support the local ECCD programs by participating in various community-based projects such as, but not limited to, health, nutrition, social

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development and early childhood education projects for the overall development of their children from age zero to four years.

SEC. 8. Strengthening the ECCD Council. – The ECCD Council shall be strengthened to ensure the State’s focus on building a strong foundation for the development and learning of children during the early years from age zero to four years, to support the full range of health, nutrition, early education and social development programs for the child’s holistic development and ensure sustained interagency and multisectoral collaboration. The Council shall be attached to the DepED.

SEC. 9. Organization of the ECCD Council. – The ECCD Council shall be composed of the following.

(a) **ECCD Governing Board.** – The ECCD Governing Board shall be composed of:

- (1) Secretary of the DepED, as *ex officio* Chairperson;
- (2) Executive Director of the ECCD Council, as Vice Chairperson;
- (3) Secretary of the DSWD, as member;
- (4) Secretary of the DOH, as member;
- (5) Executive Director of the NNC, as member;
- (6) President of the ULAP, as member; and
- (7) One private individual who is an ECCD practitioner and expert shall be appointed by the President upon the recommendation of the Board, as member.

The Board shall meet once a month or upon the call of the Chairperson or three members of the Board.

(b) **Council Secretariat.** – There shall be established an ECCD Council Secretariat to be headed by an Executive Director. The Secretariat shall provide support services for the coordination and monitoring of the implementation of policies and plans formulated by the Council subject to the Compensation and Position Classification System and other existing civil service rules and regulations.

SEC. 10. Functions of the ECCD Council. – The ECCD Council shall carry out the objectives of the National ECCD System by performing the following functions:

- (a) Promulgate policies and implement guidelines for ECCD programs in consultation with stakeholders, including the regional level when appropriate, consistent with the national policy and program frameworks as defined in this Act;
- (b) Establish ECCD program standards that reflect developmentally appropriate practices for ECCD programs, which shall interface with the kindergarten curriculum of the DepED;
- (c) Develop a national system for the recruitment, registration, accreditation, continuing education and equivalency, and credential system of ECCD service providers, supervisors and administrators to improve and professionalize the ECCD sector and upgrade quality standards of public and private ECCD programs;
- (d) Develop a national system of awards and recognition to deserving ECCD program implementers and service providers;
- (e) Promote, encourage and coordinate the various ECCD programs of the DepED, the DSWD, the DOH and the NNC, and monitor the delivery of services to the ECCD program beneficiaries nationwide;
- (f) Evaluate and assess the impact and outcome of various ECCD programs nationwide through an effective information system;
- (g) Develop a national system for early identification, screening and surveillance of young children from age zero to four years;

- (h) Develop various support mechanisms that maximize public and private resources for implementing ECCD programs, giving priority to the needy and high risk children from poor communities;
- (i) Provide funds to poor and disadvantaged communities for the establishment and expansion of public ECCD programs, improvement of physical facilities and for hiring of ECCD service providers;
- (j) Promote and encourage private sector initiatives for the establishment of ECCD programs;
- (k) Provide guidelines for the conduct of solicitations from local and international civic organizations, and request private foundations to supplement available resources; and
- (l) Perform such other functions as the ECCD Council may deem necessary.

SEC. 11. Appropriations. – The amount needed for the initial implementation of this Act shall be charged against the current year’s appropriations of the DepED, the DSWD, the DOH and the NNC for the purpose. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act (GAA).

In addition, the Philippine Amusement and Gaming Corporation shall contribute an amount of Five Hundred Million Pesos (P500 million) per year for five years from its gross income to fund the establishment of National Child Development Centers and the conversion of existing Day Care Centers into Child Development Centers in various LGUs upon approval of this Act. Said amount shall be directly remitted in four quarterly installments to a special account of the ECCD Council.

SEC. 12. Financing ECCD Programs. – ECCD programs shall be financed through a combination of public and private funds. All public ECCD program providers shall prioritize children from age zero to four years born of families who are in greatest need and who can least afford private ECCD programs.

- (a) Financial and Technical Support. – The DepED, the DSWD and the DOH shall support the implementation of the National ECCD System by providing financial and technical support packages to ECCD programs.
- (b) Other Forms of Support for ECCD Programs. – LGUs shall be encouraged to support public ECCD programs in their respective localities. Additional funds may be generated from intergovernmental donors and government financial institutions to support the public programs including the urban poor.

There shall be established a fund for an ECCD Program Contracting Scheme with accredited private providers at the community levels.

- (c) Fees and Contributions. – Fees and contributions collected for both public and private ECCD programs shall be monitored by the ECCD Council to ensure that these are affordable and within reasonable limits. Families are encouraged to contribute their time and services to support the ECCD programs.

SEC. 13. Annual Report. – The ECCD Council shall, at the close of each calendar year, submit annual physical and financial reports to Congress, giving a detailed account of its proceedings and accomplishments during the year, making recommendations for the adoption of measures that will improve the National ECCD System and ensuring achievement of universal coverage of ECCD benefits to all children from age zero to four years, within a period of five years.

SEC. 14. Implementing Rules and Regulations. – The ECCD Council, in consultation with appropriate government agencies and NGOs, shall formulate and issue the necessary rules and regulations within 60 days after the effectivity of this Act.

SEC. 15. Repealing Clause. – Republic Act No. 8980, otherwise known as “An Act Promulgating a Comprehensive Policy and a National System for Early Childhood Care and Development (ECCD), Providing Funds Therefor and for Other Purposes,” is hereby repealed.

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All laws, decrees, executive orders, presidential proclamations, rules and regulations or parts thereof contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 16. *Separability Clause.* – If, for any reason, any portion of this Act shall be declared unconstitutional, other parts or provisions hereof which are not affected shall continue to be in full force and effect.

SEC. 17. *Effectivity Clause.* – This Act shall take effect 15 days after its publication in the Official Gazette or in at least two newspapers of general circulation.

REPUBLIC ACT No. 10572

AN ACT ESTABLISHING THE LIABILITY OF THE ABSOLUTE COMMUNITY OR CONJUGAL PARTNERSHIP FOR AN OBLIGATION OF A SPOUSE WHO PRACTICES A PROFESSION AND THE CAPABILITY OF EITHER SPOUSE TO DISPOSE OF AN EXCLUSIVE PROPERTY WITHOUT THE CONSENT OF THE OTHER SPOUSE, AMENDING FOR THE PURPOSE ARTICLES 73 AND 111 OF EXECUTIVE ORDER No. 209, ALSO KNOWN AS THE FAMILY CODE OF THE PHILIPPINES

Approved on May 24, 2013

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

SECTION 1. Article 73 of the Family Code, as amended, is hereby further amended to read as follows:

ART. 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

In case of disagreement, the court shall decide whether or not:

- (1) The objection is proper, and
- (2) Benefit has accrued to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the community property. If the benefit accrued thereafter, such obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.

SEC. 2. Article III of the Family Code, as amended, is hereby further amended to read as follows:

Art. 111. Either spouse may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property.

SEC. 3. *Separability Clause.* – If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 4. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 5. *Effectivity Clause.* – This Act shall take effect 15 days after its publication in at least two newspapers of general circulation.

REPUBLIC ACT No. 10630
AN ACT STRENGTHENING THE JUVENILE JUSTICE SYSTEM IN THE PHILIPPINES,
AMENDING FOR THE PURPOSE REPUBLIC ACT No. 9344, OTHERWISE KNOWN AS THE
“JUVENILE JUSTICE AND WELFARE ACT OF 2006” AND APPROPRIATING FUNDS THEREFOR
Approved on October 3, 2013

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

SECTION 1. The Title of Republic Act No. 9344 is hereby amended to read as follows: “An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Social Welfare and Development, Appropriating Funds Therefor, and for Other Purposes.”

SEC. 2. Section 4 of Republic Act No. 9344 is hereby amended to read as follows:

SEC. 4. *Definition of Terms.* – The following terms as used in this Act shall be defined as follows:

x x x

- (s) ‘Bahay Pag-asa’ – refers to a 24-hour child-caring institution established, funded and managed by local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are above 15 but below 18 years of age who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.

Part of the features of a ‘Bahay Pag-asa’ is an intensive juvenile intervention and support center. This will cater to children in conflict with the law in accordance with Sections 20, 20-A and 20-B hereof.

A multi-disciplinary team composed of a social worker, a psychologist/mental health professional, a medical doctor, an educational/guidance counselor and a Barangay Council for the Protection of Children (BCPC) member shall operate the ‘Bahay Pag-asa’. The team will work on the individualized intervention plan with the child and the child’s family.

x x x.

SEC. 3. Section 6 of Republic Act No. 9344 is hereby amended to read as follows:

SEC. 6. *Minimum Age of Criminal Responsibility.* – A child 15 years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child is deemed to be 15 years of age on the day of the fifteenth anniversary of his/her birthdate.

A child above 15 years but below 18 years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

SEC. 4. Section 8 of Republic Act No. 9344 is hereby amended to read as follows:

SEC. 8. *Juvenile Justice and Welfare Council (JJWC).* – A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Social Welfare and Development and placed under its administrative supervision. The JJWC shall be chaired by an Undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

- (a) Department of Justice (DOJ);
- (b) Council for the Welfare of Children (CWC);

- (c) Department of Education (DepED);
- (d) Department of the Interior and Local Government (DILG);
- (e) Public Attorney's Office (PAO);
- (f) Bureau of Corrections (BUCOR);
- (g) Parole and Probation Administration (PPA);
- (h) National Bureau of Investigation (NBI);
- (i) Philippine National Police (PNP);
- (j) Bureau of Jail Management and Penology (BJMP);
- (k) Commission on Human Rights (CHR);
- (l) Technical Education and Skills Development Authority (TESDA);
- (m) National Youth Commission (NYC); and
- (n) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations:

- (1) Department of Justice (DOJ);
- (2) Department of Social Welfare and Development (DSWD);
- (3) Council for the Welfare of Children (CWC);
- (4) Department of Education (DepED);
- (5) Department of the Interior and Local Government (DILG);
- (6) Commission on Human Rights (CHR);
- (7) National Youth Commission (NYC);
- (8) Two representatives from NGOs, to be designated by the Secretary of Social Welfare and Development, to be selected based on the criteria established by the Council;
- (9) Department of Health (DOH); and
- (10) One representative each from the League of Provinces, League of Cities, League of Municipalities and League of Barangays.

There shall be a Regional Juvenile Justice and Welfare Committee (RJJWC) in each region. The RJJWCs will be under the administration and supervision of the JJWC. The RJJWC shall be chaired by the director of the regional office of the DSWD. It shall ensure the effective implementation of this Act at the regional and LGU levels and the coordination among its member agencies.

The RJJWC will be composed of permanent representatives who shall have a rank not lower than an assistant regional director or its equivalent to be designated by the concerned department heads from the following agencies and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations:

- (i) Department of Justice (DOJ);
- (ii) Department of Social Welfare and Development (DSWD);
- (iii) Department of Education (DepED);
- (iv) Department of the Interior and Local Government (DILG);
- (v) Commission on Human Rights (CHR);
- (vi) Department of Health (DOH);

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- (vii) Two representatives from NGOs operating within the region selected by the RJJWC based on the criteria established by the JJWC;
- (viii) One sectoral representative from the children or youth sector within the region; and
- (ix) One representative from the League of Provinces/ Cities/ Municipalities/ Barangays of the Philippines.

The JJWC shall convene within 15 days from the effectivity of this Act. The Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC national secretariat and the RJJWC secretariat.

In the implementation of this Act, the JJWC shall consult with the various leagues of local government officials.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

Sec.5. Section 9 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 9. Duties and Functions of the JJWC. – The JJWC shall have the following duties and functions:

- (a) To oversee the implementation of this Act;
- (b) To advise the President on all matters and policies relating to juvenile justice and welfare;
- (c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;
- (d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;
- (e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;
- (f) To consult with the various leagues of local government officials in the formulation and recommendation of policies and strategies for the prevention of juvenile delinquency and the promotion of juvenile justice and welfare;
- (g) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;
- (h) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as, but not limited to:
 - (1) The performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;
 - (2) The periodic trends, problems and causes of juvenile delinquency and crimes; and
 - (3) The particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall submit an annual report to Congress on the implementation of the provisions of this Act.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

- (i) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;
- (j) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;

- (k) To submit an annual report to the President on the implementation of this Act; and
- (l) To perform such other functions as may be necessary to implement the provisions of this Act.

Sec. 9-A. Duties and Functions of the RJJWC. – The RJJWC shall have the following duties and functions:

- (a) To oversee and ensure the effective implementation of this Act at the regional level and at the level of the LGUs;
- (b) To assist the concerned agencies in the implementation and in compliance with the JJWC’s adopted policies/ regulations or provide substantial inputs to the JJWC in the formulation of new ones in line with the provisions of this Act;
- (c) To assist in the development of the comprehensive 3 to 5-year local juvenile intervention program, with the participation of concerned LGUs, NGOs and youth organizations within the region and monitor its implementation;
- (d) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities within the region;
- (e) To oversee the programs and operation of the intensive juvenile intervention and support center established within the region;
- (f) To collect relevant regional information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare within the region, such as, but not limited to:
 - (1) Performance and results achieved by juvenile intervention programs and by activities of the LGUs and other government agencies within the region;
 - (2) The periodic trends, problems and causes of juvenile delinquency and crimes from the LGU level to the regional level; and
 - (3) The particular needs of children in conflict with the law in custody within their regional jurisdiction.

The data gathered shall be forwarded by the RJJWC to the JJWC on an annual basis and as may be deemed necessary by the JJWC.

- (g) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities within the region and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary reports and recommendations to appropriate agencies and to the JJWC;
- (h) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program within the region;
- (i) To submit an annual report to the JJWC on the implementation of this Act; and
- (j) To perform such other functions as may be determined by the JJWC to implement the provisions of this Act.

Sec. 6. Section 20 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 20. Children Below the Age of Criminal Responsibility. – If it has been determined that the child taken into custody is 15 years old or below, the authority which will have an initial contact with the child, in consultation with the local social welfare and development officer, has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child’s nearest relative. The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or ‘Bahay Pag-asa’ managed by LGUs or licensed and/or accredited NGOs monitored by the DSWD.

The local social welfare and development officer shall determine the appropriate programs for the child who has been released, in consultation with the child and the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following:

- (a) A duly registered nongovernmental or religious organization;
- (b) A barangay official or a member of the Barangay Council for the Protection of Children (BCPC);
- (c) A local social welfare and development officer; or, when and where appropriate, the DSWD.

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If the child has been found by the local social welfare and development officer to be dependent, abandoned, neglected or abused by his/her parents and the best interest of the child requires that he/she be placed in a youth care facility or *Bahay Pag-asa*, the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: *Provided*, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the Local Social Welfare and Development Office (LSWDO) pursuant to Presidential Decree No. 603, as amended, otherwise known as 'The Child and Youth Welfare Code' and the Supreme Court rule on commitment of children: *Provided, further*, That the minimum age for children committed to a youth care facility or 'Bahay Pag-asa' shall be 12 years old.

Sec. 20-A. Serious Crimes Committed by Children Who Are Exempt From Criminal Responsibility. – A child who is above 12 years of age up to 15 years of age and who commits parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than 12 years of imprisonment, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall be mandatorily placed in a special facility within the youth care facility or 'Bahay Pag-asa' called the Intensive Juvenile Intervention and Support Center (IJISC).

In accordance with existing laws, rules, procedures and guidelines, the proper petition for involuntary commitment and placement under the IJISC shall be filed by the local social welfare and development officer of the LGU where the offense was committed, or by the DSWD social worker in the local social welfare and development officer's absence, within 24 hours from the time of the receipt of a report on the alleged commission of said child. The court, where the petition for involuntary commitment has been filed shall decide on the petition within 72 hours from the time the said petition has been filed by the DSWD/LSWDO. The court will determine the initial period of placement of the child within the IJISC which shall not be less than one year. The multi-disciplinary team of the IJISC will submit to the court a case study and progress report, to include a psychiatric evaluation report and recommend the reintegration of the child to his/her family or the extension of the placement under the IJISC. The multi-disciplinary team will also submit a report to the court on the services extended to the parents and family of the child and the compliance of the parents in the intervention program. The court will decide whether the child has successfully completed the center-based intervention program and is already prepared to be reintegrated with his/her family or if there is a need for the continuation of the center-based rehabilitation of the child. The court will determine the next period of assessment or hearing on the commitment of the child.

Sec. 20-B. Repetition of Offenses. – A child who is above 12 years of age up to 15 years of age and who commits an offense for the second time or oftener: *Provided*, That the child was previously subjected to a community-based intervention program, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall undergo an intensive intervention program supervised by the local social welfare and development officer: *Provided, further*, That, if the best interest of the child requires that he/she be placed in a youth care facility or 'Bahay Pag-asa,' the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: *Provided, finally*, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO pursuant to Presidential Decree No. 603, as amended.

Sec. 20-C. Exploitation of Children for Commission of Crimes. – Any person who, in the commission of a crime, makes use, takes advantage of, or profits from the use of children, including any person who abuses his/her authority over the child or who, with abuse of confidence, takes advantage of the vulnerabilities of the child and shall induce, threaten or instigate the commission of the crime, shall be imposed the penalty prescribed by law for the crime committed in its maximum period.

Sec. 20-D. Joint Parental Responsibility. – Based on the recommendation of the multi-disciplinary team of the IJISC, the LSWDO or the DSWD, the court may require the parents of a child in conflict with the law to undergo counseling or any other intervention that, in the opinion of the court, would advance the welfare and best interest of the child.

As used in this Act, 'parents' shall mean any of the following:

- (a) Biological parents of the child; or
- (b) Adoptive parents of the child; or
- (c) Individuals who have custody of the child.

A court exercising jurisdiction over a child in conflict with the law may require the attendance of one or both parents of the child at the place where the proceedings are to be conducted.

The parents shall be liable for damages unless they prove, to the satisfaction of the court, that they were exercising reasonable supervision over the child at the time the child committed the offense and exerted reasonable effort and utmost diligence to prevent or discourage the child from committing another offense.

Sec. 20-E. Assistance to Victims of Offenses Committed by Children. – The victim of the offense committed by a child and the victim’s family shall be provided the appropriate assistance and psychological intervention by the LSWDO, the DSWD and other concerned agencies.

Sec. 7. Section 22 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 22. Duties During Initial Investigation. – The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

The taking of the statement of the child shall be conducted in the presence of the following:

- (1) Child’s counsel of choice or in the absence thereof, a lawyer from the PAO;
- (2) The child’s parents, guardian, or nearest relative, as the case may be; and
- (3) The local social welfare and development officer.

In the absence of the child’s parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

The social worker shall conduct an initial assessment to determine the appropriate interventions and whether the child acted with discernment, using the discernment assessment tools developed by the DSWD. The initial assessment shall be without prejudice to the preparation of a more comprehensive case study report. The local social worker shall do either of the following:

- (a) Proceed in accordance with Section 20 if the child is 15 years or below or above 15 but below 18 years old, who acted without discernment; and
- (b) If the child is above 15 years old but below 18 and who acted with discernment, proceed to diversion under the following chapter.

Sec. 8. Section 33 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 33. Preliminary Investigation and Filing of Information. – The prosecutor shall conduct a preliminary investigation in the following instances:

- (a) When the child in conflict with the law does not qualify for diversion;
- (b) When the child, his/her parents or guardian does not agree to diversion as specified in Sections 27 and 28; and
- (c) When considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law.

Upon serving the *subpoena* and the affidavit of complaint, the prosecutor shall notify the PAO of such service, as well as the personal information, and place of detention of the child in conflict with the law.

Upon determination of probable cause by the prosecutor, the information against the child shall be filed before the Family Court within 45 days from the start of the preliminary investigation. The information must allege that the child acted with discernment.

Sec. 9. Section 49 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 49. Establishment of ‘Bahay Pag-Asa’. – Each province and highly-urbanized city (the LGUs) shall be responsible for building, funding and operating a ‘Bahay Pag-asa’ within their jurisdiction following the standards that will be set by the DSWD and adopted by the JJWC.

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Every 'Bahay Pag-asa' will have a special facility called the IJISC. This Center will be allocated for children in conflict with the law in accordance with Sections 20, 20-A and 20-B hereof. These children will be required to undergo a more intensive multi-disciplinary intervention program. The JJWC in partnership with, but not limited to, the DSWD, the DOH, the DepED and the DILG, will develop and set the standards for the implementation of the multi-disciplinary intervention program of the IJISC. Upon institutionalization of the IJISC program, the JJWC will continue to monitor and provide technical assistance to the multi-disciplinary teams operating the said centers.

Sec. 10. Section 50 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 50. *Care and Maintenance of the Child in Conflict with the Law.* – x x x

The LGUs expected expenditures on the local juvenile intervention program for children at risk and children in conflict with the law shall be included in the LGUs annual budget. Highly-urbanized cities and provincial governments should include a separate budget for the construction and maintenance of the 'Bahay Pag-asa' including the operation of the IJISC within the 'Bahay Pag-asa.'

Sec. 11. Section 57 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 57. *Status Offenses.* – Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.

Sec. 57-A. *Violations of Local Ordinances.* – Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. No penalty shall be imposed on children for said violations, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. Appropriate intervention programs shall be provided for in such ordinances. The child shall also be recorded as a 'child at risk' and not as a 'child in conflict with the law.' The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars.

Sec. 12. *Mandatory Registry of Children in Conflict with the Law.* – All duty-bearers, including barangay/BCPC workers, law enforcers, teachers, guidance counselors, social workers and prosecutors who will receive report, handle or refer cases of children in conflict with the law, shall ensure a faithful recordation of all pertinent information, such as age, residence, gender, crime committed or accused of and the details of the intervention or diversion, as the case may be, under which they will undergo or has undergone, of all children in conflict with the law to guarantee the correct application of the provisions of this Act and other laws. The JJWC shall lead in the establishment of a centralized information management system on children in conflict with the law. This provision is however without prejudice to Section 43 of this Act.

Sec. 13. Section 63 of Republic Act No. 9344 is hereby amended to read as follows:

Sec. 63. *Appropriations.* – The amount necessary to carry out the provisions of this Act shall be charged against the current year's appropriations of the JJWC under the budget of the Department of Justice. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the budget of the DSWD under the annual General Appropriations Act: *Provided*, That the amount of Four Hundred Million Pesos (P400 million) shall be appropriated for the construction of 'Bahay Pag-asa' rehabilitation centers in provinces or cities with high incidence of children in conflict with the law to be determined and identified by the DSWD and the JJWC on a priority basis: *Provided, further*, That the said amount shall be coursed through the Department of Public Works and Highways (DPWH) for its proper implementation.

The LGUs concerned shall make available, from its own resources or assets, their counterpart share equivalent to the national government contribution of Five Million Pesos (P5 million) per rehabilitation center.

In addition, the Council may accept donations, grants and contributions from various sources, in cash or in kind, for purposes relevant to its functions, subject to the usual government accounting and auditing rules and regulations.

Sec. 14. *Implementing Rules and Regulations.* – The JJWC shall promulgate the necessary rules and regulations within 60 days from the effectivity of this Act.

SEC. 15. *Separability Clause.* – If any provision of this Act is held unconstitutional, other provisions not affected thereby shall remain valid and binding.

SEC. 16. *Repealing Clause.* – All laws, decrees, ordinances and rules inconsistent with the provisions of this Act are hereby modified or repealed accordingly.

SEC. 17. *Effectivity Clause.* – This Act shall take effect 15 days after the completion of its publication in the Official Gazette or in at least two national newspapers of general circulation.

REPUBLIC ACT No. 10644
AN ACT PROMOTING JOB GENERATION AND INCLUSIVE GROWTH
THROUGH THE DEVELOPMENT OF MICRO, SMALL AND MEDIUM ENTERPRISES
Approved on July 15, 2014

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

SECTION 1. Title. – This Act shall be known as the “Go Negosyo Act.”

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State to foster national development, promote inclusive growth, and reduce poverty by encouraging the establishment of micro, small and medium enterprises (MSMEs) that facilitate local job creation, production and trade in the country. MSMEs increase income for poor households and build both business equity and personal assets over a period of time. To this end, the State shall develop plans and initiate means to ease the constraints on the establishment of MSMEs in order to rationalize the existing bureaucratic regulations, providing greater incentives and benefits to MSMEs, and strengthening the Micro, Small and Medium Enterprise Development (MSMED) Council.

SEC. 3. Establishment of Negosyo Centers. – There shall be established under the supervision of the Micro, Small and Medium Enterprise Development (MSMED) Council, a “Negosyo Center” in all provinces, cities and municipalities. The MSMED Council shall encourage public-private partnerships in the establishment and management of Negosyo Centers. In applicable areas, the existing MSME Centers shall continue to operate as Negosyo Centers subject to the provisions of this Act. The Negosyo Centers shall be responsible for promoting ease of doing business and facilitating access to services for MSMEs within its jurisdiction. The MSMED Council through the regional offices of the Department of Trade and Industry (DTI) shall perform oversight functions and shall assign personnel to fulfill the functions of the Negosyo Centers.

SEC. 4. Functions of the Negosyo Centers. – Negosyo Centers shall have the following functions:

- (a) Promote ease of doing business and access to services for MSMEs within its jurisdiction;
- (b) Coordinate and facilitate processes of government related to the set-up and management of MSMEs;
- (c) Accept and facilitate all registration application of MSMEs;
- (d) Coordinate with the respective local government units (LGUs) and liaise with concerned government agencies to process the duly accomplished forms submitted by the MSMEs;
- (e) Integrate a unified business process system for MSMEs;
- (f) Monitor and recommend business-process improvement for MSMEs;
- (g) Encourage government institutions that are related to the business application process to help promulgate information regarding the Negosyo Center;
- (h) Provide information and services in training, financing and marketing;
- (i) Support private sector activities relating to MSMEs development;
- (j) Co-organize with the local chambers of commerce and other business organizations a mentoring program for prospective and current entrepreneurs and investors;
- (k) Build local support networks and establish market linkages for MSME development;
- (l) Coordinate with schools and organizations on the development of youth entrepreneurship program;
- (m) Encourage women entrepreneurship by giving women access to information, support, training and credit facilities;

- (n) Facilitate access to grants and other forms of financial assistance, shared service facilities and equipment, and other support for MSMEs;
- (o) Ensure management guidance, assistance and improvement of the working conditions of MSMEs;
- (p) Establish a databank which shall be a source of all information necessary for project monitoring, research and policy studies and informal dissemination campaigns;
- (q) Map out all information and services essential to prospective entrepreneurs and prospective investors especially in key value chains and economic subsectors within its jurisdiction;
- (r) Establish a feedback mechanism among the MSMEs in the respective jurisdiction of Negosyo Centers: and
- (s) Conduct other programs or projects for entrepreneurial development in the country aligned with the MSMEs development plan.

SEC. 5. Registration.

- (a) Registration of MSMEs
 - (1) A unified and simplified business registration form shall be developed by the DTI and shall be made available in all Negosyo Centers. The unified business registration form shall contain all necessary information for the business application process of MSMEs. The DTI shall be responsible for regularly updating and maintaining the unified business registration forms.
 - (2) The Negosyo Center of each city or municipality shall facilitate and expedite the business application process of MSMEs in coordination with the LGUs and other concerned agencies.
 - (3) Should the concerned business permits and licensing offices fail to process the application within 15 days, the MSME shall be deemed registered for a period of one year: *Provided, however,* That within a period of 30 days from the date of application of an MSME, any business permit or licensing office shall have the authority to revoke the permit or license upon determination that an MSME has not met the requirements and qualifications imposed by the office.
 - (4) Thereafter, MSMEs shall renew their registration annually.
- (b) Certificate of Authority for Barangay Micro Business Enterprises (BMBEs) – The DTI, through the Negosyo Center in the city or municipal level, shall have the sole power to issue the Certificate of Authority for BMBEs to avail of the benefits provided by Republic Act No. 9178, otherwise known as the “Barangay Micro Business Enterprises (BMBEs) Act of 2002.” Upon the approval of registration of the BMBE, the Negosyo Center shall issue the Certificate of Authority, renewable every two years. The DTI, through the Negosyo Center may charge a fee which shall not be more than One Thousand Pesos (P1,000) to be remitted to the National Government.
- (c) Philippine Business Registry Databank – A Philippine Business Registry Databank (PBRD) shall be established under the DTI to serve as a repository of information of all business enterprises in the Philippines.

SEC. 6. Eligibility. – Any person, natural or juridical, having the qualifications as defined in Section 3(a) of Republic Act No. 9178 may apply for registration as MSME.

SEC. 7. Start-up Funds for MSMEs. – Aside from the existing benefits for MSMEs, the MSMED Council, through the DTI, the Department of Finance (DOF) and the appropriate financing institutions, shall establish a Start-up Fund for MSMEs to be sourced from the MSME Development Fund and BMBE Fund to provide financing for the development and promotion of MSMEs in priority sectors of the economy as specified in the MSMED Plan.

SEC. 8. Technology Transfer, Production and Management Training, and Marketing Assistance. – The Negosyo Centers shall provide assistance to MSMEs in the availment of technology transfer, production and management training programs and marketing assistance of the DTI, Department of Science and Technology (DOST), University

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of the Philippines–Institute for Small-Scale Industries (UP-ISSI), Cooperative Development Authority (CDA), Technical Education and Skills Development Authority (TESDA) and other agencies concerned.

SEC. 9. Composition of the Micro, Small and Medium Enterprises Development (MSMED) Council. – The members of the Council shall be the following:

- (a) The Secretary of Trade and Industry as Chair;
- (b) The Secretary of Agriculture;
- (c) The Secretary of the Interior and Local Government;
- (d) Three representatives from the MSME sector to represent Luzon, Visayas and Mindanao with at least one representative from the microenterprise sector;
- (e) One representative from the women sector designated by the Philippine Commission on Women;
- (f) One representative from the youth sector designated by the National Youth Commission; and
- (g) The Chairman of Small Business Corporation.

A. *Advisory Unit.* – There shall be an Advisory Unit to the Council, which shall consist of the following:

- (a) The Secretary of Science and Technology;
- (b) The Governor of the *Bangko Sentral ng Pilipinas*;
- (c) The President of the Land Bank of the Philippines;
- (d) The President of the Development Bank of the Philippines;
- (e) The Director General of the National Economic and Development Authority;
- (f) One representative from the labor sector, to be nominated by accredited labor groups;
- (g) A representative from the private banking sector to serve alternatively between the chamber of thrift banks, and the Rural Banker’s Association of the Philippines (RBAP);
- (h) A representative of the microfinance nongovernment organizations (NGOs);
- (i) A representative of the University of the Philippines–Institute for Small Scale Industries (UP-ISSI); and
- (j) The President of the Credit Information Corporation.

The MSMED Council may consult the Advisory Unit in its regular meetings and other activities of the Council. However, no voting rights shall be granted to the members of the Advisory Unit.

SEC. 10. Additional Functions of the MSMED Council. – Aside from its existing functions as mentioned under Section 7-B of Republic Act No. 9501, otherwise known as the “Magna Carta for Micro, Small and Medium Enterprises (MSMEs),” the MSMED Council shall have the following additional functions:

- (a) **Coordinating and Oversight Body for the Negosyo Center.** – The MSMED Council, through the DTI, shall act as the coordinating and supervising body for all the agencies involved in the establishment and operation of the Negosyo Centers. Further, the MSMED Council shall monitor and assess the progress of the Negosyo Centers, which shall be included in its annual report submitted to the Congress.
- (b) **Provision of a Compliance Guide.** – For each rule or group of related rules issued by any government agency for compliance by MSMEs, the Council shall publish compliance guidelines which shall be written in plain language or in the local dialect, if necessary.

The Council shall prepare separate compliance guides covering groups or classes of similarly affected MSMEs and shall cooperate with industry associations to develop and distribute such compliance guides. The publication of each compliance guide shall include the posting of the guide in an easily identified location on the website of the agency, and distribution of the guide to known industry contacts, such as

small entities, associations or industry leaders affected by the rule. The issuing government agency shall publish and disseminate the compliance rules within 90 days from the date of issuance.

- (c) **Conduct of Research on Women Entrepreneurship.** – The Council shall conduct research to support women entrepreneurship including, but not limited to entrepreneurial behavior, barriers, participation and cessation rates, discriminatory practices and contribution to the national economy and growth.
- (d) **Policy Formulation on Women Entrepreneurship.** – The Council shall provide policy direction towards recognizing women’s propensity in doing business as well as establish linkages that will enable more opportunities for women to engage in entrepreneurship.
- (e) **Development of Entrepreneurial Education and Training.** – The MSMED Council shall develop, in coordination with the Department of Education, TESDA and CHED, a course curriculum or training program in entrepreneurship that will promote entrepreneurial culture and competence. Entrepreneurship shall be integrated in the curriculum of educational and training institutions in all levels.

SEC. 11. Information Dissemination. – The Philippine Information Agency, in coordination with the DTI and the Department of the Interior and Local Government (DILG), shall ensure the proper and adequate information dissemination of the contents and benefits of this Act to pertinent media entities and all cities, municipalities and barangays.

SEC. 12. Appropriations. – The amount necessary to carry out the initial implementation of this Act shall be sourced from the current budget of the DTI. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the succeeding General Appropriations. Act.

SEC. 13. Implementing Rules and Regulations. – The Secretary of the DTI, in consultation with the appropriate agencies as may be deemed necessary, shall formulate the necessary rules and regulations to implement the provisions of this Act within 90 days after its approval. The rules and regulations issued pursuant to this Section shall take effect 15 days after its publication in a newspaper of general circulation.

SEC. 14. Separability Clause. – If any provision of this Act shall be held unconstitutional, the remainder of this Act not otherwise affected shall remain in full force and effect.

SEC. 15. Repealing Clause. – Section 4 of Republic Act No. 9178 is hereby repealed. Sections 7-A and 7-B of Republic Act No. 6977, as amended by Republic Act No. 8289 and Republic Act No. 9501, are hereby amended. Section 12 of Republic Act No. 9178 is also hereby amended. All other existing laws, presidential decrees, executive orders, proclamations or administrative, regulations that are inconsistent with the provisions of this Act are hereby amended, modified or repealed accordingly.

SEC. 16. Effectivity. – This Act shall take effect 15 days after its publication in the *Official Gazette* or in a newspaper of general circulation.

ADMINISTRATIVE MATTER No. 004-07-SC
RULE ON EXAMINATION OF A CHILD WITNESS
Effective December 15, 2000

SECTION 1. *Applicability of the Rule.* – Unless otherwise provided, this Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.

SEC. 2. *Objectives.* – The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.

SEC. 3. *Construction of the Rule.* – This Rule shall be liberally construed to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

SEC. 4. *Definitions.*

- (a) A *child witness* is any person who at the time of giving testimony is below the age of 18 years. In child abuse cases, a child includes one over 18 years but is found by the court as unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.
- (b) *Child abuse* means physical, psychological, or sexual abuse, and criminal neglect as defined in Republic Act No. 7610 and other related laws.
- (c) *Facilitator* means a person appointed by the court to pose questions to a child.
- (d) *Record regarding a child* or *record* means any photograph, videotape, audiotape, film, handwriting, typewriting, printing, electronic recording, computer data or printout, or other memorialization, including any court document, pleading, or any copy or reproduction of any of the foregoing, that contains the name, description, address, school, or any other personal identifying information about a child or his family and that is produced or maintained by a public agency, private agency, or individual.
- (e) A *guardian ad litem* is a person appointed by the court where the case is pending for a child who is a victim of, accused of, or a witness to a crime to protect the best interests of the said child.
- (f) A *support person* is a person chosen by the child to accompany him to testify at or attend a judicial proceeding or deposition to provide emotional support for him.
- (g) *Best interests of the child* means the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.
- (h) *Developmental level* refers to the specific growth phase in which most individuals are expected to behave and function in relation to the advancement of their physical, socio-emotional, cognitive, and moral abilities.
- (i) *In-depth investigative interview* or *disclosure interview* is an inquiry or proceeding conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services for the purpose of determining whether child abuse has been committed.

SEC. 5. *Guardian ad litem.*

- (a) The court may appoint a guardian *ad litem* for a child who is a victim of, accused of, or a witness to a crime to promote the best interests of the child. In making the appointment, the court shall consider the background

of the guardian *ad litem* and his familiarity with the judicial process, social service programs, and child development, giving preference to the parents of the child, if qualified. The guardian *ad litem* may be a member of the Philippine Bar. A person who is a witness in any proceeding involving the child cannot be appointed as a guardian *ad litem*.

- (b) The guardian *ad litem*:
 - (1) Shall attend all interviews, depositions, hearings, and trial proceedings in which a child participates;
 - (2) Shall make recommendations to the court concerning the welfare of the child;
 - (3) Shall have access to all reports, evaluations, and records necessary to effectively advocate for the child, except privileged communications;
 - (4) Shall marshal and coordinate the delivery of resources and special services to the child;
 - (5) Shall explain, in language understandable to the child, all legal proceedings, including police investigations, in which the child is involved;
 - (6) Shall assist the child and his family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the child is involved;
 - (7) May remain with the child while the child waits to testify;
 - (8) May interview witnesses; and
 - (9) May request additional examinations by medical or mental health professionals if there is a compelling need therefor.
- (c) The guardian *ad litem* shall be notified of all proceedings but shall not participate in the trial. However, he may file motions pursuant to Sections 9, 10, 25, 26, 27 and 31(c). If the guardian *ad litem* is a lawyer, he may object during trial that questions asked of the child are not appropriate to his developmental level.
- (d) The guardian *ad litem* may communicate concerns regarding the child to the court through an officer of the court designated for that purpose.
- (e) The guardian *ad litem* shall not testify in any proceeding concerning any information, statement, or opinion received from the child in the course of serving as a guardian *ad litem*, unless the court finds it necessary to promote the best interests of the child.
- (f) The guardian *ad litem* shall be presumed to have acted in good faith in compliance with his duties described in sub-section (b).

Sec. 6. Competency. – Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, *motu proprio* or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court.

- (a) *Proof of necessity.* – A party seeking a competency examination must present proof of necessity of competency examination. The age of the child by itself is not a sufficient basis for a competency examination.
- (b) *Burden of proof.* – To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence.
- (c) *Persons allowed at competency examination.* – Only the following are allowed to attend a competency examination:
 - (1) The judge and necessary court personnel;
 - (2) The counsel for the parties;
 - (3) The guardian *ad litem*;
 - (4) One or more support persons for the child; and
 - (5) The defendant, unless the court determines that competence can be fully evaluated in his absence.

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- (d) *Conduct of examination.* – Examination of a child as to his competence shall be conducted only by the judge. Counsel for the parties, however, can submit questions to the judge that he may, in his discretion, ask the child.
- (e) *Developmentally appropriate questions.* – The questions asked at the competency examination shall be appropriate to the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.
- (f) *Continuing duty to assess competence.* – The court has the duty of continuously assessing the competence of the child throughout his testimony.

SEC. 7. Oath or Affirmation. – Before testifying, a child shall take an oath or affirmation to tell the truth.

SEC. 8. Examination of a Child Witness. – The examination of a child witness presented in a hearing or any proceeding shall be done in open court. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

The party who presents a child witness or the guardian *ad litem* of such child witness may, however, move the court to allow him to testify in the manner provided in this Rule.

SEC. 9. Interpreter for Child.

- (a) When a child does not understand the English or Filipino language or is unable to communicate in said languages due to his developmental level, fear, shyness, disability, or other similar reason, an interpreter whom the child can understand and who understands the child may be appointed by the court, *motu proprio* or upon motion, to interpret for the child.
- (b) If a witness or member of the family of the child is the only person who can serve as an interpreter for the child, he shall not be disqualified and may serve as the interpreter of the child. The interpreter, however, who is also a witness, shall testify ahead of the child.
- (c) An interpreter shall take an oath or affirmation to make a true and accurate interpretation.

SEC. 10. Facilitator to Pose Questions to Child.

- (a) The court may, *motu proprio* or upon motion, appoint a facilitator if it determines that the child is unable to understand or respond to questions asked. The facilitator may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent, or relative.
- (b) If the court appoints a facilitator, the respective counsels for the parties shall pose questions to the child only through the facilitator. The questions shall either be in the words used by counsel or, if the child is not likely to understand the same, in words that are comprehensible to the child and which convey the meaning intended by counsel.
- (c) The facilitator shall take an oath or affirmation to pose questions to the child according to the meaning intended by counsel.

SEC. 11. Support Persons.

- (a) A child testifying at a judicial proceeding or making a deposition shall have the right to be accompanied by one or two persons of his own choosing to provide him emotional support.
 - (1) Both support persons shall remain within the view of the child during his testimony.
 - (2) One of the support persons may accompany the child to the witness stand, provided the support person does not completely obscure the child from the view of the opposing party, judge, or hearing officer.

- (3) The court may allow the support person to hold the hand of the child or take other appropriate steps to provide emotional support to the child in the course of the proceedings.
 - (4) The court shall instruct the support persons not to prompt, sway, or influence the child during his testimony.
- (b) If the support person chosen by the child is also a witness, the court may disapprove the choice if it is sufficiently established that the attendance of the support person during the testimony of the child would pose a substantial risk of influencing or affecting the content of the testimony of the child.
- (c) If the support person who is also a witness is allowed by the court, his testimony shall be presented ahead of the testimony of the child.

SEC. 12. *Waiting Area for Child Witnesses.* – The courts are encouraged to provide a waiting area for children that is separate from waiting areas used by other persons. The waiting area for children should be furnished so as to make a child comfortable.

SEC. 13. *Courtroom Environment.* – To create a more comfortable environment for the child, the court may, in its discretion, direct and supervise the location, movement and deportment of all persons in the courtroom including the parties, their counsel, child, witnesses, support persons, guardian *ad litem*, facilitator, and court personnel. The child may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the child testifies may be turned to facilitate his testimony but the opposing party and his counsel must have a frontal or profile view of the child during the testimony of the child. The witness chair or other place from which the child testifies may also be rearranged to allow the child to see the opposing party and his counsel, if he chooses to look at them, without turning his body or leaving the witness stand. The judge need not wear his judicial robe.

Nothing in this Section or any other provision of law, except official in-court identification provisions, shall be construed to require a child to look at the accused.

Accommodations for the child under this Section need not be supported by a finding of trauma to the child.

SEC. 14. *Testimony during Appropriate Hours.* – The court may order that the testimony of the child should be taken during a time of day when the child is well-rested.

SEC. 15. *Recess during Testimony.* – The child may be allowed reasonable periods of relief while undergoing direct, cross, re-direct, and re-cross examinations as often as necessary depending on his developmental level.

SEC. 16. *Testimonial Aids.* – The court shall permit a child to use dolls, anatomically-correct dolls, puppets, drawings, mannequins, or any other appropriate demonstrative device to assist him in his testimony.

SEC. 17. *Emotional Security Item.* – While testifying, a child shall be allowed to have an item of his own choosing such as a blanket, toy, or doll.

SEC. 18. *Approaching the Witness.* – The court may prohibit a counsel from approaching a child if it appears that the child is fearful of or intimidated by the counsel.

SEC. 19. *Mode of Questioning.* – The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

SEC. 20. *Leading Questions.* – The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

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SEC. 21. *Objections to Questions.* – Objections to questions should be couched in a manner so as not to mislead, confuse, frighten, or intimidate the child.

SEC. 22. *Corroboration.* – Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

SEC. 23. *Excluding the Public.* – When a child testifies, the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made to protect the right to privacy of the child or if the court determines on the record that requiring the child to testify in open court would cause psychological harm to him, hinder the ascertainment of truth, or result in his inability to effectively communicate due to embarrassment, fear, or timidity. In making its order, the court shall consider the developmental level of the child, the nature of the crime, the nature of his testimony regarding the crime, his relationship to the accused and to persons attending the trial, his desires, and the interests of his parents or legal guardian. The court may, *motu proprio*, exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be offensive to decency or public morals. The court may also, on motion of the accused, exclude the public from trial, except court personnel and the counsel of the parties.

SEC. 24. *Persons Prohibited from Entering and Leaving Courtroom.* – The court may order that persons attending the trial shall not enter or leave the courtroom during the testimony of the child.

SEC. 25. *Live-Link Television Testimony in Criminal Cases where the Child is a Victim or a Witness.*

- (a) The prosecutor, counsel or the guardian *ad litem* may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

Before the guardian *ad litem* applies for an order under this Section, he shall consult the prosecutor or counsel and shall defer to the judgment of the prosecutor or counsel regarding the necessity of applying for an order. In case the guardian *ad litem* is convinced that the decision of the prosecutor or counsel not to apply will cause the child serious emotional trauma, he himself may apply for the order.

The person seeking such an order shall apply at least five days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

- (b) The court may *motu proprio* hear and determine, with notice to the parties, the need for taking the testimony of the child through live-link television.
- (c) The judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian *ad litem*, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.
- (d) The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.
- (e) The court shall issue an order granting or denying the use of live-link television and stating the reasons therefor. It shall consider the following factors:
- (1) The age and level of development of the child;
 - (2) His physical and mental health, including any mental or physical disability;
 - (3) Any physical, emotional, or psychological injury experienced by him;
 - (4) The nature of the alleged abuse;
 - (5) Any threats against the child;
 - (6) His relationship with the accused or adverse party;

- (7) His reaction to any prior encounters with the accused in court or elsewhere;
 - (8) His reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;
 - (9) Specific symptoms of stress exhibited by the child in the days prior to testifying;
 - (10) Testimony of expert or lay witnesses;
 - (11) The custodial situation of the child and the attitude of the members of his family regarding the events about which he will testify; and
 - (12) Other relevant factors, such as court atmosphere and formalities of court procedure.
- (f) The court may order that the testimony of the child be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child.
- (g) If the court orders the taking of testimony by live-link television:
- (1) The child shall testify in a room separate from the courtroom in the presence of the guardian *ad litem*; one or both of his support persons; the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child;
 - (2) The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.
 - (3) If it is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.
 - (4) The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.
- (h) The testimony of the child shall be preserved on videotape, digital disc, or other similar devices which shall be made part of the court record and shall be subject to a protective order as provided in Section 31(b).

SEC. 26. Screens, One-Way Mirrors, and other Devices to Shield Child from Accused.

- (a) The prosecutor or the guardian *ad litem* may apply for an order that the chair of the child or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. Before the guardian *ad litem* applies for an order under this Section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of Section 25(a) of this Rule. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.
- (b) If the court grants an application to shield the child from the accused while testifying in the courtroom, the courtroom shall be arranged to enable the accused to view the child.

SEC. 27. Videotaped Deposition.

- (a) The prosecutor, counsel, or guardian *ad litem* may apply for an order that a deposition be taken of the testimony of the child and that it be recorded and preserved on videotape. Before the guardian *ad litem* applies for an order under this Section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of Section 25(a).
- (b) If the court finds that the child will not be able to testify in open court at trial, it shall issue an order that the deposition of the child be taken and preserved by videotape.

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- (c) The judge shall preside at the videotaped deposition of a child. Objections to deposition testimony or evidence, or parts thereof, and the grounds for the objection shall be stated and shall be ruled upon at the time of the taking of the deposition. The other persons who may be permitted to be present at the proceeding are:
- (1) The prosecutor;
 - (2) The defense counsel;
 - (3) The guardian *ad litem*;
 - (4) The accused, subject to Subsection (e);
 - (5) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child;
 - (6) One or both of his support persons, the facilitator and interpreter, if any;
 - (7) The court stenographer; and
 - (8) Persons necessary to operate the videotape equipment.
- (d) The rights of the accused during trial, especially the right to counsel and to confront and cross-examine the child, shall not be violated during the deposition.
- (e) If the order of the court is based on evidence that the child is unable to testify in the physical presence of the accused, the court may direct the latter to be excluded from the room in which the deposition is conducted. In case of exclusion of the accused, the court shall order that the testimony of the child be taken by live-link television in accordance with Section 25 of this Rule. If the accused is excluded from the deposition, it is not necessary that the child be able to view an image of the accused.
- (f) The videotaped deposition shall be preserved and stenographically recorded. The videotape and the stenographic notes shall be transmitted to the clerk of the court where the case is pending for safekeeping and shall be made a part of the record.
- (g) The court may set other conditions on the taking of the deposition that it finds just and appropriate, taking into consideration the best interests of the child, the constitutional rights of the accused, and other relevant factors.
- (h) The videotaped deposition and stenographic notes shall be subject to a protective order as provided in Section 31(b).
- (i) If, at the time of trial, the court finds that the child is unable to testify for a reason stated in Section 25(f) of this Rule, or is unavailable for any reason described in Section 4(c), Rule 23 of the 1997 Rules of Civil Procedure, the court may admit into evidence the videotaped deposition of the child in lieu of his testimony at the trial. The court shall issue an order stating the reasons therefor.
- (j) After the original videotaping but before or during trial, any party may file any motion for additional videotaping on the ground of newly discovered evidence. The court may order an additional videotaped deposition to receive the newly discovered evidence.

SEC. 28. Hearsay Exception in Child Abuse Cases. – A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

- (a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such circumstance must be proved by the proponent.

- (b) In ruling on the admissibility of such hearsay statement, the court shall consider the time, content and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:
 - (1) Whether there is a motive to lie;
 - (2) The general character of the declarant child;
 - (3) Whether more than one person heard the statement;
 - (4) Whether the statement was spontaneous;
 - (5) The timing of the statement and the relationship between the declarant child and witness;
 - (6) Cross-examination could not show the lack of knowledge of the declarant child;
 - (7) The possibility of faulty recollection of the declarant child is remote; and
 - (8) The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.
- (c) The child witness shall be considered unavailable under the following situations:
 - (1) Is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or
 - (2) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.
- (d) When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence.

SEC. 29. Admissibility of Videotaped and Audiotaped In-Depth Investigative or Disclosure Interviews in Child Abuse Cases. – The court may admit videotape and audiotape in-depth investigative or disclosure interviews as evidence, under the following conditions:

- (a) The child witness is unable to testify in court on grounds and under conditions established under Section 28(c).
- (b) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.
- (c) The party offering the videotape or audiotape must prove that:
 - (1) the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;
 - (2) the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;
 - (3) the videotape and audiotape machine or device was capable of recording testimony;
 - (4) the person operating the device was competent to operate it;
 - (5) the videotape or audiotape is authentic and correct; and
 - (6) it has been duly preserved.

The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.

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The fact that an investigative interview is not videotaped or audiotaped as required by this Section shall not by itself constitute a basis to exclude from evidence out-of-court statements or testimony of the child. It may, however, be considered in determining the reliability of the statements of the child describing abuse.

SEC. 30. *Sexual Abuse Shield Rule.*

(a) *Inadmissible evidence.* – The following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse:

- (1) Evidence offered to prove that the alleged victim engaged in other sexual behavior; and
- (2) Evidence offered to prove the sexual predisposition of the alleged victim.

(b) *Exception.* – Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible.

A party intending to offer such evidence must:

- (1) File a written motion at least 15 days before trial, specifically describing the evidence and stating the purpose for which it is offered, unless the court, for good cause, requires a different time for filing or permits filing during trial; and
- (2) Serve the motion on all parties and the guardian *ad litem* at least three days before the hearing of the motion.

Before admitting such evidence, the court must conduct a hearing in chambers and afford the child, his guardian *ad litem*, the parties, and their counsel a right to attend and be heard. The motion and the record of the hearing must be sealed and remain under seal and protected by a protective order set forth in Section 31(b). The child shall not be required to testify at the hearing in chambers except with his consent.

SEC. 31. *Protection of Privacy and Safety.*

(a) *Confidentiality of records.* – Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall only be released to the following:

- (1) Members of the court staff for administrative use;
- (2) The prosecuting attorney;
- (3) Defense counsel;
- (4) The guardian *ad litem*;
- (5) Agents of investigating law enforcement agencies; and
- (6) Other persons as determined by the court.

(b) *Protective order.* – Any videotape or audiotape of a child that is part of the court record shall be under a protective order that provides as follows:

- (1) Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian *ad litem*.
- (2) No tape, or any portion thereof, shall be divulged by any person mentioned in Subsection (a) to any other person, except as necessary for the trial.
- (3) No person shall be granted access to the tape, its transcription or any part thereof unless he signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he will be subject to the contempt power of the court.
- (4) Each of the tape cassettes and transcripts thereof made available to the parties, their counsel, and respective agents shall bear the following cautionary notice:

This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law.

- (5) No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.
- (6) Within 30 days from receipt, all copies of the tape and any transcripts thereof shall be returned to the clerk of court for safekeeping unless the period is extended by the court on motion of a party.
- (7) This protective order shall remain in full force and effect until further order of the court.
- (c) *Additional protective orders.* – The court may, *motu proprio* or on motion of any party, the child, his parents, legal guardian, or the guardian *ad litem*, issue additional orders to protect the privacy of the child.
- (d) *Publication of identity contemptuous.* – Whoever publishes or causes to be published in any format the name, address, telephone number, school, or other identifying information of a child who is or is alleged to be a victim or accused of a crime or a witness thereof, or an immediate family of the child shall be liable to the contempt power of the court.
- (e) *Physical safety of child; exclusion of evidence.* – A child has a right at any court proceeding not to testify regarding personal identifying information, including his name, address, telephone number, school, and other information that could endanger his physical safety or his family. The court may, however, require the child to testify regarding personal identifying information in the interest of justice.
- (f) *Destruction of videotapes and audiotapes.* – Any videotape or audiotape of a child produced under the provisions of this Rule or otherwise made part of the court record shall be destroyed after five years have elapsed from the date of entry of judgment.
- (g) *Records of youthful offender.* – Where a youthful offender has been charged before any city or provincial prosecutor or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be considered as privileged and may not be disclosed directly or indirectly to anyone for any purpose whatsoever.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to Chapter 3 of PD No. 603, all the records of his case shall also be considered as privileged and may not be disclosed directly or indirectly to anyone except to determine if a defendant may have his sentence suspended under Article 192 of PD No. 603 or if he may be granted probation under the provisions of PD No. 968 or to enforce his civil liability, if said liability has been imposed in the criminal action. The youthful offender concerned shall not be held under any provision of law to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him for any purpose.

Records within the meaning of this Subsection shall include those which may be in the files of the National Bureau of Investigation and with any police department or government agency which may have been involved in the case. (Article 200, PD No. 603)

SEC. 32. *Applicability of Ordinary Rules.* – The provisions of the Rules of Court on deposition, conditional examination of witnesses, and evidence shall be applied in a suppletory character.

SEC. 33. *Effectivity.* – This Rule shall take effect on December 15, 2000, following its publication in two newspapers of general circulation.

ADMINISTRATIVE MATTER No. 01-7-01-SC
RULES ON ELECTRONIC EVIDENCE
Effective August 1, 2001

RULE 1
COVERAGE

SECTION 1. Scope.— Unless otherwise provided herein, these Rules shall apply whenever an electronic data message, as defined in Rule 2 hereof, is offered or used in evidence.

SEC. 2. Cases Covered. – These Rules shall apply to all civil actions and proceedings, as well as quasi-judicial and administrative cases.

SEC. 3. Application of the Other Rules on Evidence. – In all matters not specifically covered by these Rules, the *Rules of Court* and pertinent provisions of statutes containing rules on evidence shall apply.

RULE 2
DEFINITION OF TERMS AND CONSTRUCTION

SECTION 1. Definition of Terms. – For purposes of these Rules, the following terms are defined, as follows:

- (a) *Asymmetric or public cryptosystem* means a system capable of generating a secure key pair, consisting of a private key for creating a digital signature, and a public key for verifying the digital signature.
- (b) *Business records* include records of any business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit, or for legitimate purposes.
- (c) *Certificate* means an electronic document issued to support a digital signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair.
- (d) *Computer* refers to any single or interconnected device or apparatus, which, by electronic, electro-mechanical or magnetic impulse, or by other means with the same function, can receive, record, transmit, store, process, correlate, analyze, project, retrieve and/or produce information, data, text, graphics, figures, voice, video, symbols or other modes of expression or perform any one or more of these functions.
- (e) *Digital Signature* refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer's public key can accurately determine:
 - (i) whether the transformation was created using the private key that corresponds to the signer's public key;
and
 - (ii) whether the initial electronic document had been altered after the transformation was made.
- (f) *Digitally signed* refers to an electronic document or electronic data message bearing a digital signature verified by the public key listed in a certificate.
- (g) *Electronic data message* refers to information generated, sent, received or stored by electronic, optical or similar means.
- (h) *Electronic document* refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic

document. For purposes of these Rules, the term “electronic document” may be used interchangeably with “electronic data message.”

- (i) *Electronic key* refers to a secret code which secures and defends sensitive information that crosses over public channels into a form decipherable only with a matching electronic key.
- (j) *Electronic signature* refers to any distinctive mark, characteristics and/or sound in electronic form. Representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document. For purposes of these Rules, an electronic signature includes digital signatures.
- (k) *Ephemeral electronic communication* refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained.
- (l) *Information and Communication System* refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar devices by or in which data are recorded or stored and any procedure related to the recording or storage of electronic data message or electronic document.
- (m) *Key Pair* in an asymmetric cryptosystem refers to the private key and its mathematically related public key such that the latter can verify the digital signature that the former creates.
- (n) *Private Key* refers to the key of a key pair used to create a digital signature.
- (o) *Public Key* refers to the key of a key pair used to verify a digital signature.

SEC. 2. Construction. – These Rules shall be liberally construed to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases.

The Interpretation of these Rules shall also take into consideration the international origin of *Republic Act No. 8792, otherwise known as the Electronic Commerce Act.*

RULE 3 ELECTRONIC DOCUMENTS

SECTION 1. *Electronic Documents as Functional Equivalent of Paper-Based Documents.* – Whenever a rule of evidence refers to the term of writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules.

SEC. 2. *Admissibility.* – An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the *Rules of Court* and related laws and is authenticated in the manner prescribed by these Rules.

SEC. 3. *Privileged Communication.* – The confidential character of a privileged communications is not solely on the ground that it is in the form of an electronic document.

RULE 4 BEST EVIDENCE RULE

SECTION 1. *Original of an Electronic Document.* – An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

SEC. 2. *Copies as Equivalent of the Originals.* – When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the

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same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

- (a) A genuine question is raised as to the authenticity of the original; or
- (b) In the circumstances it would be unjust or inequitable to admit a copy in lieu of the original.

RULE 5

AUTHENTICATION OF ELECTRONIC DOCUMENTS

SECTION 1. Burden of Proving Authenticity. – The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.

SEC. 2. Manner of Authentication. – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

- (a) By evidence that it had been digitally signed by the person purported to have signed the same;
- (b) By evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
- (c) By other evidence showing its integrity and reliability to the satisfaction of the judge.

SEC. 3. Proof of Electronically Notarized Document. – A document electronically notarized in accordance with the rules promulgated by the Supreme Court shall be considered as a public document and proved as a notarial document under the *Rules of Court*.

RULE 6

ELECTRONIC SIGNATURES

SECTION 1. Electronic Signature. – An electronic signature or a digital signature authenticated in the manner prescribed hereunder is admissible in evidence as the functional equivalent of the signature of a person on a written document.

SEC. 2. Authentication of Electronic Signatures. – An electronic signature may be authenticated in any of the following manner:

- (a) By evidence that a method or process was utilized to establish a digital signature and verify the same;
- (b) By any other means provided by law; or
- (c) By any other means satisfactory to the judge as establishing the genuineness of the electronic signature.

SEC. 3. Disputable Presumptions Relation to Electronic Signature. – Upon the authentication of an electronic signature, it shall be presumed that:

- (a) The electronic signature is that of the person to whom it correlates;
- (b) The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and
- (c) The methods or processes utilized to affix or verify the electronic signature operated without error or fault.

SEC. 4. *Disputable Presumptions Relating to Digital Signatures.* – Upon the authentication of a digital signature, it shall be presumed, in addition to those mentioned in the immediately preceding section, that:

- (a) The information contained in a certificate is correct;
- (b) The digital signature was created during the operational period of a certificate;
- (c) No cause exists to render a certificate invalid or revocable;
- (d) The message associated with a digital signature has not been altered from the time it was signed; and
- (e) A certificate had been issued by the certification authority indicated therein

RULE 7

EVIDENTIARY WEIGHT OF ELECTRONIC DOCUMENTS

SECTION 1. *Factors for Assessing Evidentiary Weight.* – In assessing the evidentiary weight of an electronic document, the following factors may be considered:

- (a) The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;
- (b) The reliability of the manner in which its originator was identified;
- (c) The integrity of the information and communication system in which it is recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;
- (d) The familiarity of the witness or the person who made the entry with the communication and information system;
- (e) The nature and quality of the information which went into the communication and information system upon which the electronic data message or electronic document was based; or
- (f) Other factors which the court may consider as affecting the accuracy or integrity of the electronic document or electronic data message.

SEC. 2. *Integrity of an Information and Communication System.* – In any dispute involving the integrity of the information and communication system in which an electronic document or electronic data message is recorded or stored, the court may consider, among others, the following factors:

- (a) Whether the information and communication system or other similar device was operated in a manner that did not affect the integrity of the electronic document, and there are no other reasonable grounds to doubt the integrity of the information and communication system;
- (b) Whether the electronic document was recorded or stored by a party to the proceedings with interest adverse to that of the party using it; or
- (c) Whether the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using it.

RULE 8

BUSINESS RECORDS AS EXCEPTION TO THE HEARSAY RULE

SECTION 1. *Inapplicability of the Hearsay Rule.* – A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice of making the memorandum, report, record, or data

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compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence.

SEC. 2. *Overcoming the Presumption.* – The presumption provided for in Section 1 of this Rule may be overcome by evidence of the untrustworthiness of the source of information or the method or circumstances of the preparation, transmission or storage thereof.

RULE 9 METHOD OF PROOF

SECTION 1. *Affidavit of Evidence.* – All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

SEC. 2. *Cross-examination of Deponent.* – The affiant shall be made to affirm the contents of the affidavit in open court and may be cross-examined as a matter of right by the adverse party.

RULE 10 EXAMINATION OF WITNESSES

SECTION 1. *Electronic Testimony.* – After summarily hearing the parties pursuant to Rule 9 of these Rules, the court may authorize the presentation of testimonial evidence by electronic means. Before so authorizing, the court shall determine the necessity for such presentation and prescribe terms and conditions as may be necessary under the circumstance, including the protection of the rights of the parties and witnesses concerned.

SEC. 2. *Transcript of Electronic Testimony.* – When examination of a witness is done electronically, the entire proceedings, including the questions and answers, shall be transcribed by a stenographer, stenotypist or other recorder authorized for the purpose, who shall certify as correct the transcript done by him. The transcript should reflect the fact that the proceedings, either in whole or in part, had been electronically recorded.

SEC. 3. *Storage of Electronic Evidence.* – The electronic evidence and recording thereof as well as the stenographic notes shall form part of the record of the case. Such transcript and recording shall be deemed *prima facie* evidence of such proceedings.

RULE 11 AUDIO, PHOTOGRAPHIC, VIDEO AND EPHEMERAL EVIDENCE

SECTION 1. *Audio, Video and Similar Evidence.* – Audio, photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof.

SEC. 2. *Ephemeral Electronic Communications.* – Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section.

If the foregoing communications are recorded or embodied in an electronic document, then the provisions of Rule 5 shall apply.

RULE 12
EFFECTIVITY

SECTION 1. *Applicability to Pending Cases.* – These Rules shall apply to cases pending after their effectivity.

SEC. 2. *Effectivity.* – These Rules shall take effect on the first day of August 2001 following their publication before the 20th day of July 2001 in two newspapers of general circulation in the Philippines.

ADMINISTRATIVE MATTER No. 02-1-19-SC
RULE ON COMMITMENT OF CHILDREN
Effective April 15, 2002

SECTION 1. Objective. – The objective of this Rule is to ensure that every effort is exerted to promote the child’s welfare and enhance his opportunities for a useful and happy life. Toward this end, this Rule seeks to protect the child from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to his development.

SEC. 2. Interpretation. – The best interests of the child shall be the paramount consideration in all actions concerning him, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities and legislative bodies consistent with the United Nations Convention on the Rights of the Child.

SEC. 3. Definition of Terms.

- (a) *Child* is a person below 18 years of age.
- (b) *Department* refers to the Department of Social Welfare and Development.
- (c) *Dependent child* is one who is without a parent, guardian or custodian, or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody, and is dependent upon the public for support.
- (d) *Abandoned child* is one who has no proper parental care or guardianship, or whose parents or guardian has deserted him for a period of at least six continuous months.
- (e) *Neglected child* is one whose basic needs have been deliberately unattended to or inadequately attended to, physically or emotionally, by his parents or guardian.
- (f) *Physical neglect* occurs when the child is malnourished, ill-clad and without proper shelter.
- (g) *Emotional neglect* occurs when a child is raped, seduced, maltreated, exploited, overworked or made to work under conditions not conducive to good health; made to beg in the streets or public places, or when placed in moral danger, or exposed to drugs, alcohol, gambling, prostitution and other vices.
- (h) *Disabled child* includes mentally retarded, physically handicapped, emotionally disturbed and mentally ill children, children with cerebral palsy and those with similar afflictions.
- (i) *Mentally retarded child* is one who is (1) socially incompetent, that is, socially inadequate, occupationally incompetent and unable to manage his own affairs; (2) mentally subnormal; (3) intellectually retarded from birth or early age; (4) retarded at maturity; (5) mentally deficient as a result of constitutional origin through heredity or diseases or (6) essentially incurable.
- (j) *Physically handicapped child* is one who is crippled, deaf-mute, blind, or otherwise suffers from a defect which restricts his means of action or communication with others.
- (k) *Emotionally disturbed child* is one who, although not afflicted with insanity or mental defect, is unable to maintain normal social relations with others and the community in general due to emotional problems or complexes.
- (l) *Mentally ill child* is one with any behavioral disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.
- (m) *Commitment or surrender of a child* is the legal act of entrusting a child to the care of the Department or any duly licensed child-placement or child-caring agency or individual by the court, parent or guardian or any interested party.
- (n) *Involuntarily committed child* is one whose parents have been permanently and judicially deprived of parental authority due to abandonment; substantial, continuous, or repeated neglect; abuse; or incompetence to discharge parental responsibilities in accordance with Section 4 herein.

- (o) *Voluntarily committed child* is one whose parents knowingly and willingly relinquished parental authority to the Department or any duly licensed child-placement or child-caring agency or individual in accordance with Section 3 herein.
- (p) *Child-placing or child-placement agency* refers to a private non-profit or charitable institution or government agency duly licensed and accredited by the Department to provide comprehensive child welfare services, including but not limited to, receiving applications for adoption or foster care, evaluating the prospective adoptive or foster parents and preparing the home study report.
- (q) *Child-caring agency* refers to a private non-profit or charitable institution or government agency duly licensed and accredited by the Department that provides 24-hour residential care services for abandoned, orphaned, neglected, involuntarily or voluntarily committed children.
- (r) *Guardian ad litem* is a person appointed by the court where the case is pending for a child sought to be committed to protect his best interests.
- (s) *Case Study Report* is a written report of the result of an investigation conducted by a social worker as to the socio-cultural, economic and legal status or condition of the child sought to be committed. It shall include among others his developmental age, educational attainment, family and social relationships, the quality of his peer group, his family's strengths and weaknesses and parental control over him. The report is submitted to the Family Court to aid it in its evaluation of whether the child ought to be committed to the care of the Department or any duly licensed child-placement or child-caring agency or individual.

SEC. 4. *Petition for Involuntary Commitment of a Child.*

- (a) *Who May File.* – The Secretary of the Department or his authorized representative or any duly licensed child-placement or child-caring agency having knowledge of a child who appears to be dependent, abandoned or neglected, may file a verified petition for involuntary commitment of said child to the care of any duly licensed child-placement or child-caring agency or individual.
- (b) *Venue.* – The petition shall be filed with the Family Court of the province or city in which the parent or guardian resides or where the child is found.
- (c) *Contents of Verified Petition.* – The petition must state:
 1. The names of the parents or guardian and their place of residence. If the child's parents are unknown, petitioner must allege that diligent efforts have been exerted to locate them. If said parents are deceased, petitioner shall attach a certified true copy of their death certificate;
 2. The facts showing that the child is dependent, abandoned, or neglected;
 3. The facts showing who has custody of the child at the time of the filing of the petition; and
 4. The name, address and written consent of the Department or duly licensed child-placement or child-caring agency or individual to whose care the commitment of the child is sought to be entrusted.
- (d) *Summons; Court to Set Time for Hearing.* – If the court is satisfied that the petition is sufficient in form and substance, it shall direct the clerk of court to immediately issue summons which shall be served together with a copy of the petition and a notice of hearing, upon the parents or guardian of the child and the office of the public prosecutor not less than five days before the date of the hearing. The office of the public prosecutor shall be directed to immediately transmit the summons to the prosecutor assigned to the Family Court concerned.

If it appears from the petition that both parents of the child are dead or that neither parent can be found in the province or city where the court is located and the child has no guardian residing therein, summons may not be issued and the court shall thereupon appoint a guardian *ad litem* pursuant to Subsection (f) below and proceed with the hearing of the case with due notice to the provincial or city prosecutor.

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- (e) *Social Worker.* – After the court sets the petition for hearing in accordance with Subsection (d) above, it shall direct the social worker to submit, before the hearing, a case study report of the child to aid it in evaluating whether said child should be committed to the care of the Department or any duly licensed child-placement or child-caring agency or individual. The report shall bear the signature of the social worker on every page.
- (f) *Guardian Ad Litem of Child.* – If neither of the parents nor the guardian of the child can be located or does not appear in court despite due notice, or if the court finds them incompetent to protect the best interests of the child, it shall be the duty of the court to appoint a suitable person as guardian *ad litem* to represent the child. In making the appointment, the court shall consider the background of the guardian *ad litem* and his familiarity with the judicial process, social service programs and child development. A member of the Philippine Bar may be appointed guardian *ad litem*.
- (g) *Child's Right to Counsel.* – The court, upon request of the child capable of forming his own views or upon request of his guardian *ad litem*, shall appoint a lawyer to represent him in the proceedings.
- (h) *Duty of Public Prosecutor.* – The provincial or city prosecutor shall appear for the State and ascertain if there has been due notice to all parties concerned and that there is justification for the declaration of dependency, abandonment or neglect.
- (i) *Hearing.* – The court shall direct the person or agency which has custody of the child to bring the latter to the court on the date of the hearing of the petition and shall ascertain the facts and determine whether the child is dependent, abandoned, or neglected, and if so, the cause and circumstances of such condition.
- (j) *Judgment.* – If, after the hearing, the court shall find the child to be dependent, abandoned, or neglected, it shall render judgment committing him to the care and custody of the Department or any duly licensed child-placement or child-caring agency or individual until he reaches the age of 18. The judgment shall likewise make proper provisions for the custody of the property or money belonging to the committed child.

If the child is committed to the Department, it shall notify the court within 30 days from the order of commitment, the name and address of the duly licensed and accredited child-placement or child-caring agency or individual where the child shall be placed.

However, if the court finds that the abandonment or neglect of the child may be remedied, the child may be allowed to stay in his own home under the care and control of his parents or guardian, subject to supervision and direction of the Department.

- (k) *Visitation or Inspection.* – Any duly licensed child-placement or child-caring agency or individual to whom a child has been committed by the court shall be subject to visitation or inspection by a representative of the court or of the Department, as the case may be or of both, to determine whether the welfare and interests of the child are being served.
- (l) *Report of Person or Institution.* – Any duly licensed child-placement or child-caring agency or individual to whom a child has been committed by judicial order may at any time be required by the court to submit a report, containing all necessary information for determining whether the welfare of the child is being served.
- (m) *Temporary Custody of Child.* – The duly licensed child-placement or child-caring agency or individual to whom a child has been committed may file a verified motion with the court which granted the petition for involuntary commitment of a child to place him in the care of any suitable person, upon the latter's request, for a period not exceeding one month at a time. The court may order the social worker to submit a case study report to aid it in evaluating whether such temporary custody shall be for the best interests of the child. The period of temporary custody of the child may be extended by the court for a period not exceeding one month at a time upon motion of the duly licensed child-placement or child-caring agency or individual to which the child has been committed.

The court, *motu proprio*, or upon request of the child assisted by his guardian *ad litem*, or at the instance of the agency or person to whom the child was committed, after due notice and hearing, shall discontinue the temporary custody of the child if it appears that he is not being given proper care.

After one month from the date temporary custody of the child was given to another suitable person, the agency or individual shall submit to the court a verified report on whether the temporary custody of the child has promoted his best interests.

- (n) *Change of Custody.* – If the child is committed to the Department, it shall have the authority to change the custody of a child it had placed with any duly licensed child-placement or child-caring agency or individual if it appears that such change is for the best interests of the child. The Department shall notify the court of any change in custody of the child.

When conflicting interests arise among child-placement or child-caring agencies, the court which granted the involuntary commitment of the child, upon motion of the Department or any of the agencies concerned, shall order the change of commitment of the child.

- (o) *Removal of Custody.* – A motion to remove custody of a child may be filed by an authorized representative of the Department with knowledge of the facts against a child-placement or child-caring agency or individual to whose custody a child has been committed by the court on the ground of neglect of such child as defined in Section 3(e) of this Rule. The court shall set the motion for hearing with notice to the public prosecutor and the court-designated social worker. If the court finds after hearing that the allegations of the motion have been established and that it is for the best interests and welfare of the child, the court shall issue an order removing him from the custody of the person or agency, as the case may be, and committing him to the custody of another duly licensed child-placement or child-caring agency or individual.

In the same proceeding, the court may suspend or revoke the license of the agency or individual found guilty of such neglect depending upon the gravity or frequency of the offense.

- (p) *Restoration of Parental Authority after Involuntary Commitment.*

(i) *Who May File; Ground.* – The parents or guardian of a child committed to the care of a person, agency or institution by judicial order may file a verified motion for the restoration of his rights over the child with the court which granted the involuntary commitment on the ground that he is now able to take proper care and custody of said child, *provided, however,* that the child has not yet been adopted.

(ii) *Notice of Hearing.* – The court shall fix the time and date for the hearing of the motion, which shall not be earlier than 30 days nor later than 60 days from the date of the filing of said motion and cause notice of the hearing to be sent to the person, agency or institution to which the child has been committed, the public prosecutor and the court-designated social worker, at least five days before the date of hearing.

(iii) *Hearing.* – At the hearing, any person may be allowed to intervene at the discretion of the court to contest the right to the relief demanded. Witnesses may be called and examined by the parties or by the court *motu proprio.*

(iv) *Resolution.* – If it is found that the cause for the commitment of the child no longer exists and that the movant is already able to take proper care and custody of the child, the court, after taking into consideration the best interests and the welfare of the child, shall issue a resolution terminating the parental authority of the person, agency or institution to whom the child was committed by judicial order and restoring parental authority to the movant.

- (q) *Jurisdiction for Prosecution of Punishable Acts.* – The Family Court which granted the involuntary commitment shall have jurisdiction over the prosecution of a child who left without prior permission from the person or institution to which he has been judicially committed or the person under whose custody he has been judicially committed in accordance with Subsection (m) of Section 4 of this Rule. It shall likewise have jurisdiction over the person who induced the child to leave such person or institution, except in case of actual or imminent grave physical or moral danger to the child. The Family Court which granted the involuntary commitment shall also have jurisdiction over the prosecution of parents or guardians of the child who may be held liable under Articles 59 and 60 of PD No. 603 and Sections 9, 10, and 31 of RA No. 7610.

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Sec. 5. Voluntary Commitment of a Child to an Institution or Individual. – The parent or guardian of a dependent, abandoned or neglected child may voluntarily commit him to the Department or any duly licensed child-placement or child-caring agency or individual subject to the rules of the Department. However, no child shall be committed unless he is surrendered in writing by his parents or guardian stating such voluntary commitment and specifically naming the office, agency, or individual to whose custody the child is to be committed. Such written instrument should be notarized and signed in the presence of an authorized representative of the Department after counseling and other services have been made available to encourage the child's parents to keep the child.

(a) **Petition for Removal of Custody.**

- (i) *Who May File; Ground.* – The parents or guardian who voluntarily committed the child, or in their absence or failure, any person with knowledge of the facts, may file a verified petition to remove custody of the child against the child-placement or child-caring agency or individual to whose custody the child has been voluntarily committed on the ground of neglect of such child as defined in Section 3 (e) of this Rule. A child may also be removed from the custody of the child-placement or child-caring agency or individual on the ground that the voluntary commitment of the child was unjustified.
- (ii) *Venue.* – The petition shall be filed with the Family Court of the province or city where the child-placement or child-caring agency to which the child has been voluntarily committed is located or where the child may be found.
- (iii) *Contents of Verified Petition.* – The petition must state:
 - (1) The name and address of the child-placement or child-caring agency or individual to whose custody the child has been voluntarily committed;
 - (2) The facts showing that the child has been neglected by the agency or in cases where the voluntary commitment was unjustified, that the parents of the child are actually capable of taking care and custody of the child;
 - (3) The name, address and written consent of the duly licensed child-placement or child-caring agency or individual to whose care the child may be transferred.
 - (4) The facts showing that petitioner has exhausted the administrative remedies available to him.
- (iv) *Notice of Hearing.* – If the petition is sufficient in form and substance, the court shall set the same for hearing with notice to the Department, the public prosecutor, the court-designated social worker, the agency or individual to whom the child has been committed and in appropriate cases, the parents of the child.
- (v) *Judgment.* – If after hearing the court finds that the allegations of the petition have been established and that it is for the best interests and welfare of the child, it shall issue an order removing the child from the custody of the person or agency concerned, and committing him to the custody of another duly licensed child-placement or child-caring agency or individual.

The court, in the same proceeding may, after hearing the comment or recommendation of the Department, suspend or revoke the license of the agency or individual found guilty of such neglect depending upon the gravity or frequency of the offense.

- (b) **Restoration of Parental Authority After Voluntary Commitment.** – The restoration of rights of the parent or guardian over the child who has been voluntarily committed shall be governed by the rules of the Department, *provided, however*, that the petition for restoration is filed within six months from the date of voluntary commitment. In case the Department refuses to grant legal custody and parental authority to the parent or guardian over the child who has been voluntarily committed to an agency or individual, the parent or guardian may file a petition in court for restoration of parental authority in accordance with Section 4(p) of this Rule.

- (c) ***Jurisdiction for Prosecution of Punishable Acts.*** – The Family Court of the place where the child may be found or where the duly licensed child-placement or child-caring agency or individual is located shall have jurisdiction over the prosecution of a child who left without prior permission from “the person or institution to which he has been voluntarily committed.” It shall likewise have jurisdiction over the person who induced the child to leave such person or institution, except in case of grave actual or imminent physical or moral danger, to the child. The same Family Court shall also have jurisdiction over the prosecution of parents or guardians of the child who may be held liable under Articles 59 and 60 of PD No. 603 and Sections 9, 10 and 31 of RA No. 7610.

SEC. 6. *Petition for Commitment of a Disabled Child.*

- (a) ***Who May File.*** – Where a child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care but his parents or guardians are opposed thereto, the Department, or any duly licensed child-placement or child-caring agency or individual may file a verified petition for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children.

The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when his welfare and interests are at stake.

- (b) ***Venue.*** – The petition for commitment of a disabled child shall be filed with the Family Court of the place where the parent or guardian resides or where the child is found.

- (c) ***Contents of Verified Petition.*** – The petition for commitment must state the following:

- (1) The facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care;
- (2) The name of the parents and their residence, if known, or if the child has no living parent, the name and residence of the guardian, if any; and
- (3) The fact that the parents or guardian or any duly licensed disabled child-placement or child-caring agency as the case may be, has opposed the commitment of such child;
- (4) The name and written conformity of the institution where the child is to be committed.
- (5) An estimate of the costs and other expenses of maintaining the child in the institution.

The verified petition shall be sufficient if based upon the personal knowledge of the petitioner.

- (d) ***Order of Hearing; Notice.*** – If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix the date of the hearing thereof, and a copy of such order shall be served on the child alleged to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and on the person having charge of him or any of his relatives residing in the province or city as the court may deem proper.

The order shall also direct the sheriff or any other officer of the court to produce, if necessary, the alleged disabled child on the date of the hearing.

- (e) ***Hearing and Judgment.*** – If the court finds that the allegations of the petition have been established and that institutional care of the child is for his best interests or the public welfare and that his parents, or guardian or relatives are unable for any reason whatsoever to take proper care of him, the court shall order his commitment to the proper institution for disabled children. The court shall likewise make proper provisions for the custody of the property or money belonging to the committed child.

The expense of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

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In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the immediately preceding paragraph, the Department shall bear the expenses, or such part thereof as may remain unpaid.

The court shall furnish the institution to which the child has been committed with a copy of its judgment, together with all the reports and other data pertinent to the case.

- (f) *Discharge of Judicially Committed Disabled Child.* – Upon motion of the parent, guardian or institution to which the child has been judicially committed under this Rule, the court, after hearing, shall order the discharge of such child if it is established and certified by the Department that:
- (1) He is no longer a danger to himself and the community;
 - (2) He has been sufficiently rehabilitated from his physical handicap or if of working age, is already fit to engage in gainful occupation; or
 - (3) He has been sufficiently relieved of his psychological, mental and emotional problems and is ready to assume normal social relations.

SEC. 7. Effectivity. – This Rule shall take effect on April 15, 2002, after its publication in a newspaper of general circulation not later than March 15, 2002.

ADMINISTRATIVE MATTER No. 02-6-02-SC

RULE ON ADOPTION

Effective August 22, 2002

A. DOMESTIC ADOPTION

SECTION 1. *Applicability of the Rule.* – This Rule covers the domestic adoption of Filipino children.

SEC. 2. *Objectives.*

- (a) The best interests of the child shall be the paramount consideration in all matters relating to his care, custody and adoption, in accordance with Philippine laws, the United Nations (UN) Convention on the Rights of the Child, UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally, and the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption.
- (b) The State shall provide alternative protection and assistance through foster care or adoption for every child who is a foundling, neglected, orphaned, or abandoned. To this end, the State shall:
 - (i) ensure that every child remains under the care and custody of his parents and is provided with love, care, understanding and security for the full and harmonious development of his personality. Only when such efforts prove insufficient and no appropriate placement or adoption within the child's extended family is available shall adoption by an unrelated person be considered;
 - (ii) safeguard the biological parents from making hasty decisions in relinquishing their parental authority over their child;
 - (iii) prevent the child from unnecessary separation from his biological parents;
 - (iv) conduct public information and educational campaigns to promote a positive environment for adoption;
 - (v) ensure that government and private sector agencies have the capacity to handle adoption inquiries, process domestic adoption applications and offer adoption-related services including, but not limited to, parent preparation and post-adoption education and counseling;
 - (vi) encourage domestic adoption so as to preserve the child's identity and culture in his native land, and only when this is not available shall inter-country adoption be considered as a last resort; and
 - (vii) protect adoptive parents from attempts to disturb their parental authority and custody over their adopted child.

Any voluntary or involuntary termination of parental authority shall be administratively or judicially declared so as to establish the status of the child as "legally available for adoption" and his custody transferred to the Department of Social Welfare and Development (DSWD) or to any duly licensed and accredited child-placing or child-caring agency, which entity shall be authorized to take steps for the permanent placement of the child.

SEC. 3. *Definition of Terms.* – For purposes of this Rule:

- (a) *Child* is a person below 18 years of age at the time of the filing of the petition for adoption.
- (b) *A child legally available for adoption* refers to a child who has been voluntarily or involuntarily committed to the Department or to a duly licensed and accredited child-placing or child-caring agency, freed of the parental authority of his biological parents, or in case of rescission of adoption, his guardian or adopter(s).
- (c) *Voluntarily committed child* is one whose parents knowingly and willingly relinquish parental authority over him in favor of the Department.

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- (d) *Involuntarily committed child* is one whose parents, known or unknown, have been permanently and judicially deprived of parental authority over him due to abandonment; substantial, continuous or repeated neglect and abuse; or incompetence to discharge parental responsibilities.
- (e) *Foundling* refers to a deserted or abandoned infant or child whose parents, guardian or relatives are unknown; or a child committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage and registered in the Civil Register as a *foundling*.
- (f) *Abandoned child* refers to one who has no proper parental care or guardianship or whose parents have deserted him for a period of at least six continuous months and has been judicially declared as such.
- (g) *Dependent child* refers to one who is without a parent, guardian or custodian or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody and is dependent upon the public for support.
- (h) *Neglected child* is one whose basic needs have been deliberately not attended to or inadequately attended to, physically or emotionally, by his parents or guardian.
- (i) *Physical neglect* occurs when the child is malnourished, ill-clad and without proper shelter.
- (j) *Emotional neglect* exists when a child is raped, seduced, maltreated, exploited, overworked or made to work under conditions not conducive to good health or made to beg in the streets or public places, or placed in moral danger, or exposed to drugs, alcohol, gambling, prostitution and other vices.
- (k) *Child-placement agency* refers to an agency duly licensed and accredited by the Department to provide comprehensive child welfare services including, but not limited to, receiving applications for adoption, evaluating the prospective adoptive parents and preparing the adoption home study report.
- (l) *Child-caring agency* refers to an agency duly licensed and accredited by the Department that provides 24-hour residential care services for abandoned, orphaned, neglected or voluntarily committed children.
- (m) *Department* refers to the Department of Social Welfare and Development.
- (n) *Deed of Voluntary Commitment* refers to the written and notarized instrument relinquishing parental authority and committing the child to the care and custody of the Department executed by the child's biological parents or in their absence, mental incapacity or death, by the child's legal guardian, to be witnessed by an authorized representative of the Department after counseling and other services have been made available to encourage the biological parents to keep the child.
- (o) *Child Study Report* refers to a study made by the court social worker of the child's legal status, placement history, psychological, social, spiritual, medical, ethno-cultural background and that of his biological family needed in determining the most appropriate placement for him.
- (p) *Home Study Report* refers to a study made by the court social worker of the motivation and capacity of the prospective adoptive parents to provide a home that meets the needs of a child.
- (q) *Supervised trial custody* refers to the period of time during which a social worker oversees the adjustment and emotional readiness of both adopters and adoptee in stabilizing their filial relationship.
- (r) *Licensed Social Worker* refers to one who possesses a degree in Bachelor of Science in Social Work as a minimum educational requirement and who has passed the government licensure examination for social workers as required by Republic Act No. 4373.
- (s) *Simulation of birth* is the tampering of the civil registry to make it appear in the birth records that a certain child was born to a person who is not his biological mother, thus causing such child to lose his true identity and status.
- (t) *Biological Parents* refer to the child's mother and father by nature.
- (u) *Pre-Adoption Services* refer to psychosocial services provided by professionally-trained social workers of the Department, the social services units of local governments, private and government health facilities,

Family Courts, licensed and accredited child-caring and child-placement agencies and other individuals or entities involved in adoption as authorized by the Department.

- (v) *Residence* means a person's actual stay in the Philippines for three continuous years immediately prior to the filing of a petition for adoption and which is maintained until the adoption decree is entered. Temporary absences for professional, business, health, or emergency reasons not exceeding 60 days in one year does not break the continuity requirement.
- (w) *Alien* refers to any person, not a Filipino citizen, who enters and remains in the Philippines and is in possession of a valid passport or travel documents and visa.

SEC. 4. Who May Adopt. – The following may adopt:

- (1) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude; who is emotionally and psychologically capable of caring for children, at least 16 years older than the adoptee, and who is in a position to support and care for his children in keeping with the means of the family. The requirement of a 16-year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee or is the spouse of the adoptee's parent;
- (2) Any alien possessing the same qualifications as above-stated for Filipino nationals: *Provided*, That his country has diplomatic relations with the Republic of the Philippines, that he has been living in the Philippines for at least three continuous years prior to the filing of the petition for adoption and maintains such residence until the adoption decree is entered, that he has been certified by his diplomatic or consular office or any appropriate government agency to have the legal capacity to adopt in his country, and that his government allows the adoptee to enter his country as his adopted child. *Provided, further*, That the requirements on residency and certification of the alien's qualification to adopt in his country may be waived for the following:
 - (i) a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity; or
 - (ii) one who seeks to adopt the legitimate child of his Filipino spouse; or
 - (iii) one who is married to a Filipino citizen and seeks to adopt jointly with his spouse a relative within the fourth degree of consanguinity or affinity of the Filipino spouse.
- (3) The guardian with respect to the ward after the termination of the guardianship and clearance of his financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:

- (i) if one spouse seeks to adopt the legitimate child of one spouse by the other spouse; or
- (ii) if one spouse seeks to adopt his own illegitimate child: *Provided, however*, That the other spouse has signified his consent thereto; or
- (iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt or one spouse adopts the illegitimate child of the other, joint parental authority shall be exercised by the spouses.

SEC. 5. Who May be Adopted. – The following may be adopted:

- (1) Any person below 18 years of age who has been voluntarily committed to the Department under Articles 154, 155 and 156 of PD No. 603 or judicially declared available for adoption;
- (2) The legitimate child of one spouse, by the other spouse;
- (3) An illegitimate child, by a qualified adopter to raise the status of the former to that of legitimacy;

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- (4) A person of legal age regardless of civil status, if, prior to the adoption, said person has been consistently considered and treated by the adopters as their own child since minority;
- (5) A child whose adoption has been previously rescinded; or
- (6) A child whose biological or adoptive parents have died: *Provided*, That no proceedings shall be initiated within six months from the time of death of said parents.
- (7) A child not otherwise disqualified by law or these rules.

SEC. 6. Venue. – The petition for adoption shall be filed with the Family Court of the province or city where the prospective adoptive parents reside.

SEC. 7. Contents of the Petition. – The petition shall be verified and specifically state at the heading of the initiatory pleading whether the petition contains an application for change of name, rectification of simulated birth, voluntary or involuntary commitment of children, or declaration of child as abandoned, dependent or neglected.

1. If the adopter is a Filipino citizen, the petition shall allege the following:
 - (a) The jurisdictional facts;
 - (b) That the petitioner is of legal age, in possession of full civil capacity and legal rights; is of good moral character; has not been convicted of any crime involving moral turpitude; is emotionally and psychologically capable of caring for children; is at least 16 years older than the adoptee, unless the adopter is the biological parent of the adoptee or is the spouse of the adoptee's parent; and is in a position to support and care for his children in keeping with the means of the family and has undergone pre-adoption services as required by Section 4 of Republic Act No. 8552.
2. If the adopter is an alien, the petition shall allege the following:
 - (a) The jurisdictional facts;
 - (b) Subparagraph 1(b) above;
 - (c) That his country has diplomatic relations with the Republic of the Philippines;
 - (d) That he has been certified by his diplomatic or consular office or any appropriate government agency to have the legal capacity to adopt in his country and his government allows the adoptee to enter his country as his adopted child and reside there permanently as an adopted child; and
 - (e) That he has been living in the Philippines for at least three continuous years prior to the filing of the petition and he maintains such residence until the adoption decree is entered.

The requirements of certification of the alien's qualification to adopt in his country and of residency may be waived if the alien:

- (i) is a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity; or
 - (ii) seeks to adopt the legitimate child of his Filipino spouse; or
 - (iii) is married to a Filipino citizen and seeks to adopt jointly with his spouse a relative within the fourth degree of consanguinity or affinity of the Filipino spouse.
3. If the adopter is the legal guardian of the adoptee, the petition shall allege that guardianship had been terminated and the guardian had cleared his financial accountabilities.
 4. If the adopter is married, the spouse shall be a co-petitioner for joint adoption except if:
 - (a) one spouse seeks to adopt the legitimate child of the other, or
 - (b) if one spouse seeks to adopt his own illegitimate child and the other spouse signified written consent thereto, or
 - (c) if the spouses are legally separated from each other.

5. If the adoptee is a foundling, the petition shall allege the entries which should appear in his birth certificate, such as name of child, date of birth, place of birth, if known; sex, name and citizenship of adoptive mother and father, and the date and place of their marriage.
6. If the petition prays for a change of name, it shall also state the cause or reason for the change of name.

In all petitions, it shall be alleged:

- (a) The first name, surname or names, age and residence of the adoptee as shown by his record of birth, baptismal or foundling certificate and school records.
- (b) That the adoptee is not disqualified by law to be adopted.
- (c) The probable value and character of the estate of the adoptee.
- (d) The first name, surname or names by which the adoptee is to be known and registered in the Civil Registry.

A certification of non-forum shopping shall be included pursuant to Section 5, Rule 7 of the 1997 Rules of Civil Procedure.

SEC. 8. Rectification of Simulated Birth. – In case the petition also seeks rectification of a simulated of birth, it shall allege that:

- (a) Petitioner is applying for rectification of a simulated birth;
- (b) The simulation of birth was made prior to the date of effectivity of Republic Act No. 8552 and the application for rectification of the birth registration and the petition for adoption were filed within five years from said date;
- (c) The petitioner made the simulation of birth for the best interests of the adoptee; and
- (d) The adoptee has been consistently considered and treated by petitioner as his own child.

Sec. 9. Adoption of a foundling, an abandoned, dependent or neglected child. – In case the adoptee is a foundling, an abandoned, dependent or neglected child, the petition shall allege:

- (a) The facts showing that the child is a foundling, abandoned, dependent or neglected;
- (b) The names of the parents, if known, and their residence. If the child has no known or living parents, then the name and residence of the guardian, if any;
- (c) The name of the duly licensed child-placement agency or individual under whose care the child is in custody; and
- (d) That the Department, child-placement or child-caring agency is authorized to give its consent.

SEC. 10. Change of name. – In case the petition also prays for change of name, the title or caption must contain:

- (a) The registered name of the child;
- (b) Aliases or other names by which the child has been known; and
- (c) The full name by which the child is to be known.

SEC. 11. Annexes to the Petition. – The following documents shall be attached to the petition:

- A. Birth, baptismal or foundling certificate, as the case may be, and school records showing the name, age and residence of the adoptee;
- B. Affidavit of consent of the following:
 1. The adoptee, if 10 years of age or over;

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2. The biological parents of the child, if known, or the legal guardian, or the child-placement agency, child-caring agency, or the proper government instrumentality which has legal custody of the child;
 3. The legitimate and adopted children of the adopter and of the adoptee, if any, who are 10 years of age or over;
 4. The illegitimate children of the adopter living with him who are 10 years of age or over; and
 5. The spouse, if any, of the adopter or adoptee.
- C. Child study report on the adoptee and his biological parents;
- D. If the petitioner is an alien, certification by his diplomatic or consular office or any appropriate government agency that he has the legal capacity to adopt in his country and that his government allows the adoptee to enter his country as his own adopted child unless exempted under Section 4(2);
- E. Home study report on the adopters. If the adopter is an alien or residing abroad but qualified to adopt, the home study report by a foreign adoption agency duly accredited by the Inter-Country Adoption Board; and
- F. Decree of annulment, nullity or legal separation of the adopter as well as that of the biological parents of the adoptee, if any.

SEC. 12. Order of Hearing. – If the petition and attachments are sufficient in form and substance, the court shall issue an order which shall contain the following:

- (1) the registered name of the adoptee in the birth certificate and the names by which the adoptee has been known which shall be stated in the caption;
- (2) the purpose of the petition;
- (3) the complete name which the adoptee will use if the petition is granted;
- (4) the date and place of hearing which shall be set within six months from the date of the issuance of the order and shall direct that a copy thereof be published before the date of hearing at least once a week for three successive weeks in a newspaper of general circulation in the province or city where the court is situated; *Provided*, that in case of application for change of name, the date set for hearing shall not be within four months after the last publication of the notice nor within 30 days prior to an election.

The newspaper shall be selected by raffle under the supervision of the Executive Judge.

- (5) a directive to the social worker of the court, the social service office of the local government unit or any child-placing or child-caring agency, or the Department to prepare and submit child and home study reports before the hearing if such reports had not been attached to the petition due to unavailability at the time of the filing of the latter; and
- (6) a directive to the social worker of the court to conduct counseling sessions with the biological parents on the matter of adoption of the adoptee and submit her report before the date of hearing.

At the discretion of the court, copies of the order of hearing shall also be furnished the Office of the Solicitor General through the provincial or city prosecutor, the Department and the biological parents of the adoptee, if known.

If a change in the name of the adoptee is prayed for in the petition, notice to the Solicitor General shall be mandatory.

SEC. 13. Child and Home Study Reports. – In preparing the child study report on the adoptee, the concerned social worker shall verify with the Civil Registry the real identity and registered name of the adoptee. If the birth of the adoptee was not registered with the Civil Registry, it shall be the responsibility of the social worker to register the adoptee and secure a certificate of foundling or late registration, as the case may be.

The social worker shall establish that the child is legally available for adoption and the documents in support thereof are valid and authentic, that the adopter has sincere intentions and that the adoption shall inure to the best interests of the child.

In case the adopter is an alien, the home study report must show the legal capacity to adopt and that his government allows the adoptee to enter his country as his adopted child in the absence of the certification required under Section 7(b) of Republic Act No. 8552.

If after the conduct of the case studies, the social worker finds that there are grounds to deny the petition, he shall make the proper recommendation to the court, furnishing a copy thereof to the petitioner.

SEC. 14. Hearing. – Upon satisfactory proof that the order of hearing has been published and jurisdictional requirements have been complied with, the court shall proceed to hear the petition. The petitioner and the adoptee must personally appear and the former must testify before the presiding judge of the court on the date set for hearing.

The court shall verify from the social worker and determine whether the biological parent has been properly counseled against making hasty decisions caused by strain or anxiety to give up the child; ensure that all measures to strengthen the family have been exhausted; and ascertain if any prolonged stay of the child in his own home will be inimical to his welfare and interest.

SEC. 15. Supervised Trial Custody. – Before issuance of the decree of adoption, the court shall give the adopter trial custody of the adoptee for a period of at least six months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. The trial custody shall be monitored by the social worker of the court, the Department, or the social service of the local government unit, or the child-placement or child-caring agency which submitted and prepared the case studies. During said period, temporary parental authority shall be vested in the adopter.

The court may, *motu proprio* or upon motion of any party, reduce the period or exempt the parties if it finds that the same shall be for the best interests of the adoptee, stating the reasons therefor.

An alien adopter however must complete the six-month trial custody except the following:

- a) a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity;
or
- b) one who seeks to adopt the legitimate child of his Filipino spouse; or
- c) one who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse the latter's relative within the fourth degree of consanguinity or affinity.

If the child is below seven years of age and is placed with the prospective adopter through a pre-adoption placement authority issued by the Department, the court shall order that the prospective adopter shall enjoy all the benefits to which the biological parent is entitled from the date the adoptee is placed with him.

The social worker shall submit to the court a report on the result of the trial custody within two weeks after its termination.

SEC. 16. Decree of Adoption. – If the supervised trial custody is satisfactory to the parties and the court is convinced from the trial custody report and the evidence adduced that the adoption shall redound to the best interests of the adoptee, a decree of adoption shall be issued which shall take effect as of the date the original petition was filed even if the petitioners die before its issuance.

The decree shall:

- A. State the name by which the child is to be known and registered;

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B. Order:

1. the Clerk of Court to issue to the adopter a certificate of finality upon expiration of the 15-day reglementary period within which to appeal;
2. the adopter to submit a certified true copy of the decree of adoption and the certificate of finality to the Civil Registrar where the child was originally registered within 30 days from receipt of the certificate of finality. In case of change of name, the decree shall be submitted to the Civil Registrar where the court issuing the same is situated.
3. the Civil Registrar of the place where the adoptee was registered:
 - a. to annotate on the adoptee's original certificate of birth the decree of adoption within 30 days from receipt of the certificate of finality;
 - b. to issue a certificate of birth which shall not bear any notation that it is a new or amended certificate and which shall show, among others, the following: registry number, date of registration, name of child, sex, date of birth, place of birth, name and citizenship of adoptive mother and father, and the date and place of their marriage, when applicable;
 - c. to seal the original certificate of birth in the civil registry records which can be opened only upon order of the court which issued the decree of adoption; and
 - d. to submit to the court issuing the decree of adoption proof of compliance with all the foregoing within 30 days from receipt of the decree.

If the adoptee is a foundling, the court shall order the Civil Registrar where the foundling was registered, to annotate the decree of adoption on the foundling certificate and a new birth certificate shall be ordered prepared by the Civil Registrar in accordance with the decree.

SEC. 17. Book of Adoptions. – The Clerk of Court shall keep a book of adoptions showing the date of issuance of the decree in each case, compliance by the Civil Registrar with Section 16(B)(3) and all incidents arising after the issuance of the decree.

SEC. 18. Confidential Nature of Proceedings and Records. – All hearings in adoption cases, after compliance with the jurisdictional requirements shall be confidential and shall not be open to the public. All records, books and papers relating to the adoption cases in the files of the court, the Department, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential.

If the court finds that the disclosure of the information to a third person is necessary for security reasons or for purposes connected with or arising out of the adoption and will be for the best interests of the adoptee, the court may, upon proper motion, order the necessary information to be released, restricting the purposes for which it may be used.

SEC. 19. Rescission of Adoption of the Adoptee. – The petition shall be verified and filed by the adoptee who is over 18 years of age, or with the assistance of the Department, if he is a minor, or if he is over 18 years of age but is incapacitated, by his guardian or counsel.

The adoption may be rescinded based on any of the following grounds committed by the adopter:

- 1) repeated physical and verbal maltreatment by the adopter despite having undergone counseling;
- 2) attempt on the life of the adoptee;
- 3) sexual assault or violence; or
- 4) abandonment or failure to comply with parental obligations.

Adoption, being in the best interests of the child, shall not be subject to rescission by the adopter. However, the adopter may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

SEC. 20. Venue. – The petition shall be filed with the Family Court of the city or province where the adoptee resides.

SEC. 21. Time within which to File Petition. – The adoptee, if incapacitated, must file the petition for rescission or revocation of adoption within five years after he reaches the age of majority, or if he was incompetent at the time of the adoption, within five years after recovery from such incompetency.

SEC. 22. Order to Answer. – The court shall issue an order requiring the adverse party to answer the petition within 15 days from receipt of a copy thereof. The order and copy of the petition shall be served on the adverse party in such manner as the court may direct.

SEC. 23. Judgment. – If the court finds that the allegations of the petition are true, it shall render judgment ordering the rescission of adoption, with or without costs, as justice requires.

The court shall order that the parental authority of the biological parent of the adoptee, if known, or the legal custody of the Department shall be restored if the adoptee is still a minor or incapacitated and declare that the reciprocal rights and obligations of the adopter and the adoptee to each other shall be extinguished.

The court shall further declare that successional rights shall revert to its status prior to adoption, as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected.

It shall also order the adoptee to use the name stated in his original birth or foundling certificate.

The court shall further order the Civil Registrar where the adoption decree was registered to cancel the new birth certificate of the adoptee and reinstate his original birth or foundling certificate.

SEC. 24. Service of Judgment. – A certified true copy of the judgment together with a certificate of finality issued by the Branch Clerk of the Court which rendered the decision in accordance with the preceding Section shall be served by the petitioner upon the Civil Registrar concerned within 30 days from receipt of the certificate of finality. The Civil Registrar shall forthwith enter the rescission decree in the register and submit proof of compliance to the court issuing the decree and the Clerk of Court within 30 days from receipt of the decree.

The Clerk of Court shall enter the compliance in accordance with Section 17 hereof.

SEC. 25. Repeal. – This supersedes Rule 99 on Adoption and Rule 100 of the Rules of Court.

B. INTER-COUNTRY ADOPTION

SECTION 26. Applicability. – The following sections apply to inter-country adoption of Filipino children by foreign nationals and Filipino citizens permanently residing abroad.

SEC. 27. Objectives. – The State shall:

- a) consider inter-country adoption as an alternative means of child care, if the child cannot be placed in a foster or an adoptive family or cannot, in any suitable manner, be cared for in the Philippines;
- b) ensure that the child subject of inter-country adoption enjoys the same protection accorded to children in domestic adoption; and
- c) take all measures to ensure that the placement arising therefrom does not result in improper financial gain for those involved.

SEC. 28. Where to File Petition. – A verified petition to adopt a Filipino child may be filed by a foreign national or Filipino citizen permanently residing abroad with the Family Court having jurisdiction over the place where the child resides or may be found.

It may be filed directly with the Inter-Country Adoption Board.

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SEC. 29. *Who May Be Adopted.* – Only a child legally available for domestic adoption may be the subject of inter-country adoption.

SEC. 30. *Contents of Petition.* – The petitioner must allege:

- a) his age and the age of the child to be adopted, showing that he is at least 27 years of age and at least 16 years older than the child to be adopted at the time of application, unless the petitioner is the parent by nature of the child to be adopted or the spouse of such parent, in which case the age difference does not apply;
- b) if married, the name of the spouse who must be joined as co-petitioner except when the adoptee is a legitimate child of his spouse;
- c) that he has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his country;
- d) that he has not been convicted of a crime involving moral turpitude;
- e) that he is eligible to adopt under his national law;
- f) that he can provide the proper care and support and instill the necessary moral values and example to all his children, including the child to be adopted;
- g) that he agrees to uphold the basic rights of the child, as embodied under Philippine laws and the UN Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of Republic Act No. 8043;
- h) that he comes from a country with which the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption of a Filipino child is allowed under his national laws; and
- i) that he possesses all the qualifications and none of the disqualifications provided in this Rule, in Republic Act No. 8043 and in all other applicable Philippine laws.

SEC. 31. *Annexes.* – The petition for adoption shall contain the following annexes written and officially translated in English:

- a) Birth certificate of petitioner;
- b) Marriage contract, if married, and, if applicable, the divorce decree, or judgment dissolving the marriage;
- c) Sworn statement of consent of petitioner's biological or adopted children above 10 years of age;
- d) Physical, medical and psychological evaluation of the petitioner certified by a duly licensed physician and psychologist;
- e) Income tax returns or any authentic document showing the current financial capability of the petitioner;
- f) Police clearance of petitioner issued within six months before the filing of the petitioner;
- g) Character reference from the local church/minister, the petitioner's employer and a member of the immediate community who have known the petitioner for at least five years;
- h) Full body postcard-size pictures of the petitioner and his immediate family taken at least six months before the filing of the petition.

SEC. 32. *Duty of Court.* – The court, after finding that the petition is sufficient in form and substance and a proper case for inter-country adoption, shall immediately transmit the petition to the Inter-Country Adoption Board for appropriate action.

SEC. 33. *Effectivity.* – This Rule shall take effect on August 22, 2002, following its publication in a newspaper of general circulation.

ADMINISTRATIVE MATTER No. 02-11-10-SC
RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES
AND ANNULMENT OF VOIDABLE MARRIAGES
Effective March 15, 2003

SECTION 1. Scope. – This Rule shall govern petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code of the Philippines.

The Rules of Court shall apply suppletorily.

SEC. 2. Petition for Declaration of Absolute Nullity of Void Marriages.

- (a) *Who may file.* – A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife. (*n*)
- (b) *Where to file.* – The petition shall be filed in the Family Court.
- (c) *Imprescriptibility of action or defense.* – An action or defense for the declaration of absolute nullity of void marriage shall not prescribe.
- (d) *What to allege.* – A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage, but expert opinion need not be alleged.

SEC. 3. Petition for Annulment of Voidable Marriages.

- (a) *Who may file.* – The following persons may file a petition for annulment of voidable marriage based on any of the grounds under Article 45 of the Family Code and within the period herein indicated:
 - (1) The contracting party whose parent, or guardian, or person exercising substitute parental authority did not give his or her consent, within five years after attaining the age of 21 unless, after attaining the age of 21, such party freely cohabited with the other as husband or wife; or the parent, guardian or person having legal charge of the contracting party, at any time before such party has reached the age of 21;
 - (2) The sane spouse who had no knowledge of the other's insanity; or by any relative, guardian, or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during a lucid interval or after regaining sanity, provided that the petitioner, after coming to reason, has not freely cohabited with the other as husband or wife;
 - (3) The injured party whose consent was obtained by fraud, within five years after the discovery of the fraud, provided that said party, with full knowledge of the facts constituting the fraud, has not freely cohabited with the other as husband or wife;
 - (4) The injured party whose consent was obtained by force, intimidation, or undue influence, within five years from the time the force, intimidation, or undue influence disappeared or ceased, provided that the force, intimidation, or undue influence having disappeared or ceased, said party has not thereafter freely cohabited with the other as husband or wife;
 - (5) The injured party where the other spouse is physically incapable of consummating the marriage with the other and such incapacity continues and appears to be incurable, within five years after the celebration of marriage; and
 - (6) The injured party where the other party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable, within five years after the celebration of marriage.

- (b) *Where to file.* – The petition shall be filed in the Family Court.

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SEC. 4. Venue. – The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing, or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.

SEC. 5. Contents and Form of Petition.

- (1) The petition shall allege the complete facts constituting the cause of action.
- (2) It shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration of community or conjugal property, and other matters similarly requiring urgent action.

- (3) It must be verified and accompanied by a certification against forum shopping. The verification and certification must be signed personally by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice consul or consular agent in said country.

- (4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.

Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.

SEC. 6. Summons. – The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

- (1) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order. In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.
- (2) The summons to be published shall be contained in an order of the court with the following data:
 - (a) Title of the case;
 - (b) Docket number;
 - (c) Nature of the petition;
 - (d) Principal grounds of the petition and the reliefs prayed for; and
 - (e) A directive for the respondent to answer within 30 days from the last issue of publication.

SEC. 7. Motion to Dismiss. – No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; *Provided, however*, that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer.

SEC. 8. Answer.

- (1) The respondent shall file his answer within 15 days from service of summons, or within 30 days from the last issue of publication in case of service of summons by publication. The answer must be verified by the respondent himself and not by counsel or attorney-in-fact.
- (2) If the respondent fails to file an answer, the court shall not declare him or her in default.
- (3) Where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

SEC. 9. Investigation Report of Public Prosecutor.

- (1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.
- (2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within 10 days from receipt of a copy of the report. The court shall set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition.
- (3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

SEC. 10. Social Worker. – The court may require a social worker to conduct a case study and submit the corresponding report at least three days before the pre-trial. The court may also require a case study at any stage of the case whenever necessary.

SEC. 11. Pre-trial.

- (1) *Pre-trial mandatory.* – A pre-trial is mandatory. On motion or *motu proprio*, the court shall set the pre-trial after the last pleading has been served and filed, or upon receipt of the report of the public prosecutor that no collusion exists between the parties.
- (2) *Notice of pre-trial.*
 - (a) The notice of pre-trial shall contain:
 - (1) The date of pre-trial conference; and
 - (2) An order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three days before the date of pre-trial.
 - (b) The notice shall be served separately on the parties and their respective counsels as well as on the public prosecutor. It shall be their duty to appear personally at the pre-trial.
 - (c) Notice of pre-trial shall be sent to the respondent even if he fails to file an answer. In case of summons by publication and the respondent failed to file his answer, notice of pre-trial shall be sent to respondent at his last known address.

SEC. 12. Contents of Pre-trial Brief. – The pre-trial brief shall contain the following:

- (a) A statement of the willingness of the parties to enter into agreements as may be allowed by law, indicating the desired terms thereof;
- (b) A concise statement of their respective claims together with the applicable laws and authorities;
- (c) Admitted facts and proposed stipulations of facts, as well as the disputed factual and legal issues;

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- (d) All the evidence to be presented, including expert opinion, if any, briefly stating or describing the nature and purpose thereof;
- (e) The number and names of the witnesses and their respective affidavits; and
- (f) Such other matters as the court may require.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial under the succeeding paragraphs.

SEC. 13. *Effect of Failure to Appear at the Pre-trial.*

- (a) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.
- (b) If the respondent has filed his answer but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within 15 days thereafter a report to the court stating whether his non-appearance is due to any collusion between the parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

SEC. 14. *Pre-trial Conference.* – At the pre-trial conference, the court:

- (a) May refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law.

The mediator shall render a report within one month from referral which, for good reasons, the court may extend for a period not exceeding one month.

- (b) In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the petition.

SEC. 15. *Pre-trial Order.*

- (a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall issue a pre-trial order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed on the pleadings, and, except as to the ground of declaration of nullity or annulment, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties.
- (b) Should the action proceed to trial, the order shall contain a recital of the following:
 - (1) Facts undisputed, admitted, and those which need not be proved subject to Section 16 of this Rule;
 - (2) Factual and legal issues to be litigated;
 - (3) Evidence, including objects and documents, that have been marked and will be presented;
 - (4) Names of witnesses who will be presented and their testimonies in the form of affidavits; and
 - (5) Schedule of the presentation of evidence.
- (c) The pre-trial order shall also contain a directive to the public prosecutor to appear for the State and take steps to prevent collusion between the parties at any stage of the proceedings and fabrication or suppression of evidence during the trial on the merits.
- (d) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order. The order shall control the trial of the case, unless modified by the court to prevent manifest injustice.
- (e) The parties shall have five days from receipt of the pre-trial order to propose corrections or modifications.

SEC. 16. *Prohibited Compromise.* – The court shall not allow compromise on prohibited matters, such as the following:

- (a) The civil status of persons;
- (b) The validity of a marriage or of a legal separation;
- (c) Any ground for legal separation;
- (d) Future support;
- (e) The jurisdiction of courts; and
- (f) Future legitime.

SEC. 17. *Trial.*

- (1) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.
- (2) The grounds for declaration of absolute nullity or annulment of marriage must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed.
- (3) The court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court would not enhance the ascertainment of truth; would cause to the party psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the right of a party to privacy; or would be offensive to decency or public morals.
- (4) No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court.

SEC. 18. *Memoranda.* – The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda in support of their claims within 15 days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

SEC. 19. *Decision.*

- (1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.
- (2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.
- (3) The decision becomes final upon the expiration of 15 days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal is filed by any of the parties, the public prosecutor, or the Solicitor General.
- (4) Upon the finality of the decision, the court shall forthwith issue the corresponding decree if the parties have no properties.

If the parties have properties, the court shall observe the procedure prescribed in Section 21 of this Rule.

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The entry of judgment shall be registered in the Civil Registry where the marriage was recorded and in the Civil Registry where the Family Court granting the petition for declaration of absolute nullity or annulment of marriage is located.

SEC. 20. Appeal.

- (1) *Pre-condition.* – No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within 15 days from notice of judgment.
- (2) *Notice of appeal.* – An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within 15 days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.

SEC. 21. Liquidation, Partition and Distribution, Custody, Support of Common Children and Delivery of their Presumptive Legitimes. – Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings.

SEC. 22. Issuance of Decree of Declaration of Absolute Nullity or Annulment of Marriage.

- (a) The court shall issue the Decree after:
 - (1) Registration of the entry of judgment granting the petition for declaration of nullity or annulment of marriage in the Civil Registry where the marriage was celebrated and in the Civil Registry of the place where the Family Court is located;
 - (2) Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located; and
 - (3) The delivery of the children’s presumptive legitimes in cash, property, or sound securities.
- (b) The court shall quote in the Decree the dispositive portion of the judgment entered and attach to the Decree the approved deed of partition.

Except in the case of children under Articles 36 and 53 of the Family Code, the court shall order the Local Civil Registrar to issue an amended birth certificate indicating the new civil status of the children affected.

SEC. 23. Registration and Publication of the Decree; Decree as Best Evidence.

- (a) The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within 30 days from receipt of the copy of the Decree.
- (b) In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation.
- (c) The registered Decree shall be the best evidence to prove the declaration of absolute nullity or annulment of marriage and shall serve as notice to third persons concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children.

SEC. 24. Effect of Death of a Party; Duty of the Family Court or Appellate Court.

- (a) In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated, without prejudice to the settlement of the estate in proper proceedings in the regular courts.

- (b) If the party dies after the entry of judgment of nullity or annulment, the judgment shall be binding upon the parties and their successors in interest in the settlement of the estate in the regular courts.

SEC. 25. *Effectivity.* – This Rule shall take effect on March 15, 2003, following its publication in a newspaper of general circulation not later than March 7, 2003.

ADMINISTRATIVE MATTER No. 02-11-11-SC
RULE ON LEGAL SEPARATION
Effective March 15, 2003

SECTION 1. Scope. – This Rule shall govern petitions for legal separation under the Family Code of the Philippines.

The Rules of Court shall apply suppletorily.

SEC. 2. Petition.

(a) *Who may and when to file.*

- (1) A petition for legal separation may be filed only by the husband or the wife, as the case may be, within five years from the time of the occurrence of any of the following causes:
 - (a) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
 - (b) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
 - (c) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
 - (d) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
 - (e) Drug addiction or habitual alcoholism of the respondent;
 - (f) Lesbianism or homosexuality of the respondent;
 - (g) Contracting by the respondent of a subsequent bigamous marriage, whether in or outside the Philippines;
 - (h) Sexual infidelity or perversion of the respondent;
 - (i) Attempt on the life of petitioner by the respondent; or
 - (j) Abandonment of petitioner by respondent without justifiable cause for more than one year.

(b) *Contents and form.* – The petition for legal separation shall:

- (1) Allege the complete facts constituting the cause of action.
- (2) State the names and ages of the common children of the parties, specify the regime governing their property relations, the properties involved, and creditors, if any.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration of community or conjugal property, and other similar matters requiring urgent action.

- (3) Be verified and accompanied by a certification against forum shopping. The verification and certification must be personally signed by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice consul or consular agent in said country.

- (4) Be filed in six copies. The petitioner shall, within five days from such filing, furnish a copy of the petition to the City or Provincial Prosecutor and the creditors, if any, and submit to the court proof of such service within the same period.

Failure to comply with the preceding requirements may be a ground for immediate dismissal of the petition.

- (c) *Venue.* – The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.

SEC. 3. *Summons.* – The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

- (a) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such place as the court may order.

In addition, a copy of the summons shall be served on respondent at his last known address by registered mail or by any other means the court may deem sufficient.

- (b) The summons to be published shall be contained in an order of the court with the following data:
 - (1) Title of the case;
 - (2) Docket number;
 - (3) Nature of the petition;
 - (4) Principal grounds of the petition and the reliefs prayed for; and
 - (5) A directive for respondent to answer within 30 days from the last issue of publication.

SEC. 4. *Motion to Dismiss.* – No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; *provided, however,* that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer.

SEC. 5. *Answer.*

- (a) The respondent shall file his answer within 15 days from receipt of summons, or within 30 days from the last issue of publication in case of service of summons by publication. The answer must be verified by respondent himself and not by counsel or attorney-in-fact.
- (b) If the respondent fails to file an answer, the court shall not declare him in default.
- (c) Where no answer is filed, or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

SEC. 6. *Investigation Report of Public Prosecutor.*

- (a) Within one month after receipt of the court order mentioned in paragraph (c) of the preceding section, the public prosecutor shall submit a report to the court on whether the parties are in collusion and serve copies on the parties and their respective counsels, if any.
- (b) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within 10 days from receipt of copy of the report. The court shall set the report for hearing and if convinced that parties are in collusion, it shall dismiss the petition.

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- (c) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

SEC. 7. Social Worker. – The court may require a social worker to conduct a case study and to submit the corresponding report at least three days before the pre-trial. The court may also require a case study at any stage of the case whenever necessary.

SEC. 8. Pre-trial.

- (a) *Pre-trial mandatory.* – A pre-trial is mandatory. On motion or *motu proprio*, the court shall set the pre-trial after the last pleading has been served and filed, or upon receipt of the report of the public prosecutor that no collusion exists between the parties on a date not earlier than six months from date of the filing of the petition.
- (b) *Notice of Pre-trial.*
- (1) The notice of pre-trial shall contain:
 - (a) The date of pre-trial conference; and
 - (b) An order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three days before the date of pre-trial.
 - (2) The notice shall be served separately on the parties and their respective counsels as well as on the public prosecutor. It shall be their duty to appear personally at the pre-trial.
 - (3) Notice of pre-trial shall be sent to the respondent even if he fails to file an answer. In case of summons by publication and the respondent failed to file his answer, notice of pre-trial shall be sent to respondent at his last known address.

SEC. 9. Contents of Pre-trial Brief. – The pre-trial brief shall contain the following:

- (1) A statement of the willingness of the parties to enter into agreements as may be allowed by law, indicating the desired terms thereof;
- (2) A concise statement of their respective claims together with the applicable laws and authorities;
- (3) Admitted facts and proposed stipulations of facts, as well as the disputed factual and legal issues;
- (4) All the evidence to be presented, including expert opinion, if any, briefly stating or describing the nature and purpose thereof;
- (5) The number and names of the witnesses and their respective affidavits; and
- (6) Such other matters as the court may require.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial under the succeeding section.

SEC. 10. Effect of Failure to Appear at the Pre-trial.

- (1) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.
- (2) If the respondent filed his answer but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within 15 days a report to the court stating whether his non-appearance is due to any collusion between the

parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

SEC. 11. *Pre-trial Conference.* – At the pre-trial conference, the court may refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law.

The mediator shall render a report within one month from referral which, for good reasons, the court may extend for a period not exceeding one month.

In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the petition.

SEC. 12. *Pre-trial Order.*

- (a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall issue a pre-trial order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed on the pleadings, and, except as to the ground of legal separation, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties.
- (b) Should the action proceed to trial, the order shall contain a recital of the following:
 - (1) Facts undisputed, admitted, and those which need not be proved subject to Section 13 of this Rule;
 - (2) Factual and legal issues to be litigated;
 - (3) Evidence, including objects and documents, that have been marked and will be presented;
 - (4) Names of witnesses who will be presented and their testimonies in the form of affidavits; and
 - (5) Schedule of the presentation of evidence.

The pre-trial order shall also contain a directive to the public prosecutor to appear for the State and take steps to prevent collusion between the parties at any stage of the proceedings and fabrication or suppression of evidence during the trial on the merits.

- (c) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order. The order shall control the trial of the case unless modified by the court to prevent manifest injustice.
- (d) The parties shall have five days from receipt of the pre-trial order to propose corrections or modifications.

SEC. 13. *Prohibited Compromise.* – The court shall not allow compromise on prohibited matters, such as the following:

- (1) The civil status of persons;
- (2) The validity of a marriage or of a legal separation;
- (3) Any ground for legal separation;
- (4) Future support;
- (5) The jurisdiction of courts; and
- (6) Future legitime.

SEC. 14. *Trial.*

- (a) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.

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- (b) The grounds for legal separation must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed.
- (c) The court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court would not enhance the ascertainment of truth; would cause to the party psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the party's right to privacy; or would be offensive to decency or public morals.
- (d) No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court.

SEC. 15. Memoranda. – The court may require the parties and the public prosecutor to file their respective memoranda in support of their claims within 15 days from the date the trial is terminated. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

SEC. 16. Decision.

- (a) The court shall deny the petition on any of the following grounds:
 - (1) The aggrieved party has condoned the offense or act complained of or has consented to the commission of the offense or act complained of;
 - (2) There is connivance in the commission of the offense or act constituting the ground for legal separation;
 - (3) Both parties have given ground for legal separation;
 - (4) There is collusion between the parties to obtain the decree of legal separation; or
 - (5) The action is barred by prescription.
- (b) If the court renders a decision granting the petition, it shall declare therein that the Decree of Legal Separation shall be issued by the court only after full compliance with liquidation under the Family Code.

However, in the absence of any property of the parties, the court shall forthwith issue a Decree of Legal Separation which shall be registered in the Civil Registry where the marriage was recorded and in the Civil Registry where the Family Court granting the legal separation is located.

- (c) The decision shall likewise declare that:
 - (1) The spouses are entitled to live separately from each other, but the marriage bond is not severed;
 - (2) The obligation of mutual support between the spouses ceases; and
 - (3) The offending spouse is disqualified from inheriting from the innocent spouse by intestate succession, and provisions in favor of the offending spouse made in the will of the innocent spouse are revoked by operation of law.
- (d) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall also be published once in a newspaper of general circulation.

SEC. 17. Appeal.

- (a) *Pre-condition.* – No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within 15 days from notice of judgment.

- (b) *Notice of Appeal.* – An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within 15 days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal upon the adverse parties.

SEC. 18. *Liquidation, Partition and Distribution, Custody, and Support of Minor Children.* – Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody and support of common children, under the Family Code unless such matters had been adjudicated in previous judicial proceedings.

SEC. 19. *Issuance of Decree of Legal Separation.*

- (a) The court shall issue the Decree of Legal Separation after:
- (1) Registration of the entry of judgment granting the petition for legal separation in the Civil Registry where the marriage was celebrated and in the Civil Registry where the Family Court is located; and
 - (2) Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located.
- (b) The court shall quote in the Decree the dispositive portion of the judgment entered and attach to the Decree the approved deed of partition.

SEC. 20. *Registration and Publication of the Decree of Legal Separation; Decree as Best Evidence.*

- (a) *Registration of decree.* – The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, in the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within 30 days from receipt of the copy of the Decree.
- (b) *Publication of decree.* – In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation.
- (c) *Best evidence.* – The registered Decree shall be the best evidence to prove the legal separation of the parties and shall serve as notice to third persons concerning the properties of petitioner and respondent.

SEC. 21. *Effect of death of a party; duty of the Family Court or Appellate Court.*

- (a) In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated without prejudice to the settlement of estate in proper proceedings in the regular courts.
- (b) If the party dies after the entry of judgment, the same shall be binding upon the parties and their successors in interest in the settlement of the estate in the regular courts.

SEC. 22. *Petition for Revocation of Donations.*

- (a) Within five years from the date the decision granting the petition for legal separation has become final, the innocent spouse may file a petition under oath in the same proceeding for legal separation to revoke the donations in favor of the offending spouse.
- (b) The revocation of the donations shall be recorded in the Register of Deeds in the places where the properties are located.
- (c) Alienations, liens, and encumbrances registered in good faith before the recording of the petition for revocation in the registries of property shall be respected.
- (d) After the issuance of the Decree of Legal Separation, the innocent spouse may revoke the designation of the offending spouse as a beneficiary in any insurance policy even if such designation be stipulated

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as irrevocable. The revocation or change shall take effect upon written notification thereof to the insurer.

SEC. 23. Decree of Reconciliation.

- (a) If the spouses had reconciled, a joint manifestation under oath, duly signed by the spouses, may be filed in the same proceeding for legal separation.
- (b) If the reconciliation occurred while the proceeding for legal separation is pending, the court shall immediately issue an order terminating the proceeding.
- (c) If the reconciliation occurred after the rendition of the judgment granting the petition for legal separation but before the issuance of the Decree, the spouses shall express in their manifestation whether or not they agree to revive the former regime of their property relations or choose a new regime.

The court shall immediately issue a Decree of Reconciliation declaring that the legal separation proceeding is set aside and specifying the regime of property relations under which the spouses shall be covered.

- (d) If the spouses reconciled after the issuance of the Decree, the court, upon proper motion, shall issue a Decree of Reconciliation declaring therein that the Decree is set aside but the separation of property and any forfeiture of the share of the guilty spouse already effected subsists, unless the spouses have agreed to revive their former regime of property relations or adopt a new regime.
- (e) In case of paragraphs (b), (c), and (d), if the reconciled spouses choose to adopt a regime of property relations different from that which they had prior to the filing of the petition for legal separation, the spouses shall comply with Section 24 hereof.
- (f) The Decree of Reconciliation shall be recorded in the Civil Registries where the marriage and the Decree had been registered.

SEC. 24. Revival of Property Regime or Adoption of Another.

- (a) In case of reconciliation under Section 23, paragraph (c) above, the parties shall file a verified motion for revival of regime of property relations or the adoption of another regime of property relations in the same proceeding for legal separation attaching to said motion their agreement for the approval of the court.
- (b) The agreement which shall be verified shall specify the following:
 - (1) The properties to be contributed to the restored or new regime;
 - (2) Those to be retained as separate properties of each spouse; and
 - (3) The names of all their known creditors, their addresses, and the amounts owing to each.
- (c) The creditors shall be furnished with copies of the motion and the agreement.
- (d) The court shall require the spouses to cause the publication of their verified motion for two consecutive weeks in a newspaper of general circulation.
- (e) After due hearing, and the court decides to grant the motion, it shall issue an order directing the parties to record the order in the proper registries of property within 30 days from receipt of a copy of the order and submit proof of compliance within the same period.

SEC. 25. Effectivity. – This Rule shall take effect on March 15, 2003, following its publication in a newspaper of general circulation not later than March 7, 2003.

ADMINISTRATIVE MATTER No. 02-11-12-SC
RULE ON PROVISIONAL ORDERS
Effective March 15, 2003

SECTION 1. *When Issued.* – Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, *motu proprio* or upon application under oath of any of the parties, guardian or designated custodian, may issue provisional orders and protection orders with or without a hearing. These orders may be enforced immediately, with or without a bond, and for such period and under such terms and conditions as the court may deem necessary.

SEC. 2. *Spousal Support.* – In determining support for the spouses, the court may be guided by the following rules:

- (a) In the absence of adequate provisions in a written agreement between the spouses, the spouses may be supported from the properties of the absolute community or the conjugal partnership.
- (b) The court may award support to either spouse in such amount and for such period of time as the court may deem just and reasonable based on their standard of living during the marriage.
- (c) The court may likewise consider the following factors:
 - (1) Whether the spouse seeking support is the custodian of a child whose circumstances make it appropriate for that spouse not to seek outside employment;
 - (2) The time necessary to acquire sufficient education and training to enable the spouse seeking support to find appropriate employment, and that spouse's future earning capacity;
 - (3) The duration of the marriage;
 - (4) The comparative financial resources of the spouses, including their comparative earning abilities in the labor market;
 - (5) The needs and obligations of each spouse;
 - (6) The contribution of each spouse to the marriage, including services rendered in homemaking, child care, education, and career building of the other spouse;
 - (7) The age and health of the spouses;
 - (8) The physical and emotional conditions of the spouses;
 - (9) The ability of the supporting spouse to give support, taking into account that spouse's earning capacity, earned and unearned income, assets, and standard of living; and
 - (10) Any other factor the court may deem just and equitable.
- (d) The Family Court may direct the deduction of the provisional support from the salary of the spouse.

SEC. 3. *Child Support.* – The common children of the spouses shall be supported from the properties of the absolute community or the conjugal partnership.

Subject to the sound discretion of the court, either parent or both may be ordered to give an amount necessary for the support, maintenance, and education of the child. It shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

In determining the amount of provisional support, the court may likewise consider the following factors:

- (1) The financial resources of the custodial and non-custodial parent and those of the child;
- (2) The physical and emotional health of the child and his or her special needs and aptitudes;

- (3) The standard of living the child has been accustomed to;
 - (4) The non-monetary contributions that the parents will make toward the care and well-being of the child.
- The Family Court may direct the deduction of the provisional support from the salary of the parent.

SEC. 4. *Child Custody.* – In determining the right party or person to whom the custody of the child of the parties may be awarded pending the petition, the court shall consider the best interests of the child and shall give paramount consideration to the material and moral welfare of the child.

The court may likewise consider the following factors:

- (a) The agreement of the parties;
- (b) The desire and ability of each parent to foster an open and loving relationship between the child and the other parent;
- (c) The child’s health, safety, and welfare;
- (d) Any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the child, including anyone courting the parent;
- (e) The nature and frequency of contact with both parents;
- (f) Habitual use of alcohol or regulated substances;
- (g) Marital misconduct;
- (h) The most suitable physical, emotional, spiritual, psychological and educational environment; and
- (i) The preference of the child, if over seven years of age and of sufficient discernment, unless the parent chosen is unfit.

The court may award provisional custody in the following order of preference:

- (1) To both parents jointly;
- (2) To either parent taking into account all relevant considerations under the foregoing paragraph, especially the choice of the child over seven years of age, unless the parent chosen is unfit;
- (3) To the surviving grandparent, or if there are several of them, to the grandparent chosen by the child over seven years of age and of sufficient discernment, unless the grandparent is unfit or disqualified;
- (4) To the eldest brother or sister over 21 years of age, unless he or she is unfit or disqualified;
- (5) To the child’s actual custodian over 21 years of age, unless unfit or disqualified; or
- (6) To any other person deemed by the court suitable to provide proper care and guidance for the child.

The custodian temporarily designated by the court shall give the court and the parents five days notice of any plan to change the residence of the child or take him out of his residence for more than three days provided it does not prejudice the visitation rights of the parents.

SEC. 5. *Visitation Rights.* – Appropriate visitation rights shall be provided to the parent who is not awarded provisional custody unless found unfit or disqualified by the court.

SEC. 6. *Hold Departure Order.* – Pending resolution of the petition, no child of the parties shall be brought out of the country without prior order from the court.

The court, *motu proprio* or upon application under oath, may issue *ex parte* a hold departure order, addressed to the Bureau of Immigration and Deportation, directing it not to allow the departure of the child from the Philippines without the permission of the court.

The Family Court issuing the hold departure order shall furnish the Department of Foreign Affairs and the Bureau of Immigration and Deportation of the Department of Justice a copy of the hold departure order issued within 24 hours from the time of its issuance and through the fastest available means of transmittal.

The hold departure order shall contain the following information:

- (a) The complete name (including the middle name), the date and place of birth, and the place of last residence of the person against whom a hold departure order has been issued or whose departure from the country has been enjoined;
- (b) The complete title and docket number of the case in which the hold departure was issued;
- (c) The specific nature of the case; and
- (d) The date of the hold departure order.

If available, a recent photograph of the person against whom a hold departure order has been issued or whose departure from the country has been enjoined should also be included.

The court may recall the order, *motu proprio* or upon verified motion of any of the parties after summary hearing, subject to such terms and conditions as may be necessary for the best interests of the child.

SEC. 7. Order of Protection. – The court may issue an Order of Protection requiring any person:

- (a) To stay away from the home, school, business, or place of employment of the child, other parent or any other party, and to stay away from any other specific place designated by the court;
- (b) To refrain from harassing, intimidating, or threatening such child or the other parent or any person to whom custody of the child is awarded;
- (c) To refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the child;
- (d) To permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (e) To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court;
- (f) To comply with such other orders as are necessary for the protection of the child.

SEC. 8. Administration of Common Property. – If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the court may, upon application of the aggrieved party under oath, issue a provisional order appointing the applicant or a third person as receiver or sole administrator of the common property subject to such precautionary conditions it may impose.

The receiver or administrator may not dispose of or encumber any common property or specific separate property of either spouse without prior authority of the court.

The provisional order issued by the court shall be registered in the proper Register of Deeds and annotated in all titles of properties subject of the receivership or administration.

SEC. 9. Effectivity. – This Rule shall take effect on March 15, 2003, following its publication in a newspaper of general circulation not later than March 7, 2003.

ADMINISTRATIVE MATTER No. 03-02-05-SC
RULE ON GUARDIANSHIP OF MINORS
Effective May 1, 2003

SECTION 1. *Applicability of the Rule.* – This Rule shall apply to petitions for guardianship over the person or property, or both, of a minor.

The father and the mother shall jointly exercise legal guardianship over the person and property of their unemancipated common child without the necessity of a court appointment. In such case, this Rule shall be supplementary to the provisions of the Family Code on guardianship.

SEC. 2. *Who may Petition for Appointment of Guardian.* – On grounds authorized by law, any relative or other person on behalf of a minor, or the minor himself if 14 years of age or over, may petition the Family Court for the appointment of a general guardian over the person or property, or both, of such minor. The petition may also be filed by the Secretary of Social Welfare and Development and by the Secretary of Health in the case of an insane minor who needs to be hospitalized.

SEC. 3. *Where to File Petition.* – A petition for guardianship over the person or property, or both, of a minor may be filed in the Family Court of the province or city where the minor actually resides. If he resides in a foreign country, the petition shall be filed with the Family Court of the province or city where his property or any part thereof is situated.

SEC. 4. *Grounds of Petition.* – The grounds for the appointment of a guardian over the person or property, or both, of a minor are the following:

- (a) Death, continued absence, or incapacity of his parents;
- (b) Suspension, deprivation or termination of parental authority;
- (c) Remarriage of his surviving parent, if the latter is found unsuitable to exercise parental authority; or
- (d) When the best interests of the minor so require.

SEC. 5. *Qualifications of Guardians.* – In appointing a guardian, the court shall consider the guardian's:

- (a) Moral character;
- (b) Physical, mental, and psychological condition;
- (c) Financial status;
- (d) Relationship of trust with the minor;
- (e) Availability to exercise the powers and duties of a guardian for the full period of the guardianship;
- (f) Lack of conflict of interest with the minor; and
- (g) Ability to manage the property of the minor.

SEC. 6. *Who may be Appointed Guardian of the Person or Property, or Both, of a Minor.* – In default of parents or a court-appointed guardian, the court may appoint a guardian of the person or property, or both, of a minor, observing as far as practicable, the following order of preference:

- (a) The surviving grandparent and in case several grandparents survive, the court shall select any of them, taking into account all relevant considerations;
- (b) The oldest brother or sister of the minor over 21 years of age, unless unfit or disqualified;

- (c) The actual custodian of the minor over 21 years of age, unless unfit or disqualified; and
- (d) Any other person who, in the sound discretion of the court, would serve the best interests of the minor.

SEC. 7. Contents of Petition. – A petition for the appointment of a general guardian must allege the following:

- (a) The jurisdictional facts;
- (b) The name, age, and residence of the prospective ward;
- (c) The ground rendering the appointment necessary or convenient;
- (d) The death of the parents of the minor or the termination, deprivation or suspension of their parental authority;
- (e) The remarriage of the minor’s surviving parent;
- (f) The names, ages, and residences of relatives within the fourth civil degree of the minor, and of persons having him in their care and custody;
- (g) The probable value, character and location of the property of the minor; and
- (h) The name, age, and residence of the person for whom letters of guardianship are prayed.

The petition shall be verified and accompanied by a certification against forum shopping. However, no defect in the petition or verification shall render void the issuance of letters of guardianship.

SEC. 8. Time and Notice of Hearing. – When a petition for the appointment of a general guardian is filed, the court shall fix a time and place for its hearing, and shall cause reasonable notice to be given to the persons mentioned in the petition, including the minor if he is 14 years of age or over, and may direct other general or special notice to be given.

SEC. 9. Case Study Report. – The court shall order a social worker to conduct a case study of the minor and all the prospective guardians and submit his report and recommendation to the court for its guidance before the scheduled hearing. The social worker may intervene on behalf of the minor if he finds that the petition for guardianship should be denied.

SEC. 10. Opposition to Petition. – Any interested person may contest the petition by filing a written opposition based on such grounds as the majority of the minor or the unsuitability of the person for whom letters are prayed, and pray that the petition be denied, or that letters of guardianship issue to himself, or to any suitable person named in the opposition.

SEC. 11. Hearing and Order for Letters to Issue. – At the hearing of the petition, it must be shown that the requirement of notice has been complied with. The prospective ward shall be presented to the court. The court shall hear the evidence of the parties in support of their respective allegations. If warranted, the court shall appoint a suitable guardian of the person or property, or both, of the minor.

At the discretion of the court, the hearing on guardianship may be closed to the public and the records of the case shall not be released without its approval.

SEC. 12. When and How a Guardian of the Property for Non-resident Minor is Appointed; Notice. – When the minor resides outside the Philippines, but has property in the Philippines, any relative or friend of such minor, or anyone interested in his property, in expectancy or otherwise, may petition the Family Court for the appointment of a guardian over the property.

Notice of hearing of the petition shall be given to the minor by publication or any other means as the court may deem proper. The court may dispense with the presence of the non-resident minor.

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If after hearing the court is satisfied that such non-resident is a minor and a guardian is necessary or convenient, it may appoint a guardian over his property.

SEC. 13. *Service of Final and Executory Judgment or Order.* – The final and executory judgment or order shall be served upon the Local Civil Registrar of the municipality or city where the minor resides, and the Register of Deeds of the place where his property or part thereof is situated shall annotate the same in the corresponding title, and report to the court his compliance within 15 days from receipt of the order.

SEC. 14. *Bond of Guardian; Amount; Conditions.* – Before he enters upon the execution of his trust, or letters of guardianship issue, an appointed guardian may be required to post a bond in such sum as the court shall determine and conditioned as follows:

- (a) To make and return to the court, within three months after the issuance of his letters of guardianship, a true and complete inventory of all the property, real and personal, of his ward which shall come to his possession or knowledge or to the possession or knowledge of any other person in his behalf;
- (b) To faithfully execute the duties of his trust, to manage and dispose of the property according to this Rule for the best interests of the ward, and to provide for his proper care, custody and education;
- (c) To render a true and just account of all the property of the ward in his hands, and of all proceeds or interest derived therefrom, and of the management and disposition of the same, at the time designated by this Rule and such other times as the court directs; and at the expiration of his trust, to settle his accounts with the court and deliver and pay over all the property, effects, and monies remaining in his hands, or due from him on such settlement, to the person lawfully entitled thereto; and
- (d) To perform all orders of the court and such other duties as may be required by law.

SEC. 15. *Where to File the Bond; Action Thereon.* – The bond posted by a guardian shall be filed in the Family Court and, in case of breach of any of its conditions, the guardian may be prosecuted in the same proceeding for the benefit of the ward or of any other person legally interested in the property.

Whenever necessary, the court may require the guardian to post a new bond and may discharge from further liability the sureties on the old bond after due notice to interested persons, if no injury may result therefrom to those interested in the property.

SEC. 16. *Bond of Parents as Guardians of Property of Minor.* – If the market value of the property or the annual income of the child exceeds Fifty Thousand Pesos (P50,000), the parent concerned shall furnish a bond in such amount as the court may determine, but in no case less than 10 *per centum* of the value of such property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the Family Court of the place where the child resides or, if the child resides in a foreign country, in the Family Court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations of a general guardian shall be heard and resolved.

SEC. 17. *General Duties of Guardian.* – A guardian shall have the care and custody of the person of his ward and the management of his property, or only the management of his property. The guardian of the property of a non-resident minor shall have the management of all his property within the Philippines.

A guardian shall perform the following duties:

- (a) To pay the just debts of the ward out of the personal property and the income of the real property of the ward, if the same is sufficient; otherwise, out of the real property of the ward upon obtaining an order for its sale or encumbrance;

- (b) To settle all accounts of his ward, and demand, sue for, receive all debts due him, or may, with the approval of the court, compound for the same and give discharges to the debtor on receiving a fair and just dividend of the property and effects; and to appear for and represent the ward in all actions and special proceedings, unless another person is appointed for that purpose;
- (c) To manage the property of the ward frugally and without waste, and apply the income and profits thereon, insofar as may be necessary, to the comfortable and suitable maintenance of the ward; and if such income and profits be insufficient for that purpose, to sell or encumber the real or personal property, upon being authorized by the court to do so;
- (d) To consent to a partition of real or personal property owned by the ward jointly or in common with others upon authority granted by the court after hearing, notice to relatives of the ward, and a careful investigation as to the necessity and propriety of the proposed action;
- (e) To submit to the court a verified inventory of the property of his ward within three months after his appointment, and annually thereafter, the rendition of which may be required upon the application of an interested person;
- (f) To report to the court any property of the ward not included in the inventory which is discovered, or succeeded to, or acquired by the ward within three months after such discovery, succession, or acquisition; and
- (g) To render to the court, for its approval, an accounting of the property one year from his appointment, and every year thereafter, or as often as may be required.

SEC. 18. Power and Duty of the Court. – The court may:

- (a) Request the assistance of one or more commissioners in the appraisal of the property of the ward reported in the initial and subsequent inventories;
- (b) Authorize reimbursement to the guardian, other than a parent, of reasonable expenses incurred in the execution of his trust, and allow payment of compensation for his services as the court may deem just, not exceeding 10 *per centum* of the net income of the ward, if any; otherwise, in such amount the court determines to be a reasonable compensation for his services; and
- (c) Upon complaint of the guardian or ward, or of any person having actual or prospective interest in the property of the ward, require any person suspected of having embezzled, concealed, or disposed of any money, goods or interest, or a written instrument belonging to the ward or his property to appear for examination concerning any thereof and issue such orders as would secure the property against such embezzlement, concealment or conveyance.

SEC. 19. Petition to Sell or Encumber Property. – When the income of a property under guardianship is insufficient to maintain and educate the ward, or when it is for his benefit that his personal or real property or any part thereof be sold, mortgaged or otherwise encumbered, and the proceeds invested in safe and productive security, or in the improvement or security of other real property, the guardian may file a verified petition setting forth such facts, and praying that an order issue authorizing the sale or encumbrance of the property.

SEC. 20. Order to Show Cause. – If the sale or encumbrance is necessary or would be beneficial to the ward, the court shall order his next of kin and all persons interested in the property to appear at a reasonable time and place therein specified and show cause why the petition should not be granted.

SEC. 21. Hearing on Return of Order; Costs. – At the time and place designated in the order to show cause, the court shall hear the allegations and evidence of the petitioner and next of kin, and other persons interested, together with their witnesses, and grant or deny the petition as the best interests of the ward may require.

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SEC. 22. Contents of Order for Sale or Encumbrance and its Duration; Bond. – If, after full examination, it is necessary, or would be beneficial to the ward, to sell or encumber the property, or some portion of it, the court shall order such sale or encumbrance the proceeds of which shall be expended for the maintenance or the education of the ward, or invested as the circumstances may require. The order shall specify the grounds for the sale or encumbrance and may direct that the property ordered sold be disposed of at public sale, subject to such conditions as to the time and manner of payment, and security where a part of the payment is deferred. The original bond of the guardian shall stand as security for the proper appropriation of the expedient, require an additional bond as a condition, for the sale or encumbrance. The authority to sell or encumber shall not extend beyond one year, unless renewed by the court.

SEC. 23. Court may Order Investment of Proceeds and Direct Management of Property. – The court may authorize and require the guardian to invest the proceeds of sales or encumbrances, and any other money of his ward in his hands, in real or personal property, for the best interests of the ward, and may make such other orders for the management, investment, and disposition of the property and effects, as circumstances may warrant.

SEC. 24. Grounds for Removal or Resignation of Guardian. – When a guardian becomes insane or otherwise incapable of discharging his trust or is found thereafter to be unsuitable, or has wasted or mismanaged the property of the ward, or has failed to render an account or make a return for 30 days after it is due, the court may, upon reasonable notice to the guardian, remove him as such and require him to surrender the property of the ward to the person found to be lawfully entitled thereto.

The court may allow the guardian to resign for justifiable causes.

Upon the removal or resignation of the guardian, the court shall appoint a new one.

No motion for removal or resignation shall be granted unless the guardian has submitted the proper accounting of the property of the ward and the court has approved the same.

SEC. 25. Ground for Termination of Guardianship. – The court *motu proprio* or upon verified motion of any person allowed to file a petition for guardianship may terminate the guardianship on the ground that the ward has come of age or has died. The guardian shall notify the court of such fact within 10 days of its occurrence.

SEC. 26. Service of Final and Executory Judgment or Order. – The final and executory judgment or order shall be served upon the Local Civil Registrar of the municipality or city where the minor resides and the Register of Deeds of the province or city where his property or any part thereof is situated. Both the Local Civil Registrar and the Register of Deeds shall enter the final and executory judgment or order in the appropriate books in their offices.

SEC. 27. Effect of the Rule. – This Rule amends Rules 92 to 97 inclusive of the Rules of Court on guardianship of minors. Guardianship of incompetents who are not minors shall continue to be under the jurisdiction of the regular courts and governed by the Rules of Court.

SEC. 28. Effectivity. – This Rule shall take effect on May 1, 2003, following its publication in a newspaper of general circulation not later than April 15, 2003.

ADMINISTRATIVE MATTER No. 03-04-04-SC

RULE ON CUSTODY OF MINORS AND WRIT OF HABEAS CORPUS IN RELATION TO CUSTODY OF MINORS Effective May 15, 2003

SECTION 1. *Applicability.* – This Rule shall apply to petitions for custody of minors and writs of *habeas corpus* in relation thereto.

The Rules of Court shall apply suppletorily.

SEC. 2. *Petition for Custody of Minors; Who may File.* – A verified petition for the rightful custody of a minor may be filed by any person claiming such right. The party against whom it may be filed shall be designated as the respondent.

SEC. 3. *Where to File Petition.* – The petition for custody of minors shall be filed with the Family Court of the province or city where the petitioner resides or where the minor may be found.

SEC. 4. *Contents of Petition.* – The verified petition shall allege the following:

- (a) The personal circumstances of the petitioner and of the respondent;
- (b) The name, age and present whereabouts of the minor and his or her relationship to the petitioner and the respondent;
- (c) The material operative facts constituting deprivation of custody; and
- (d) Such other matters which are relevant to the custody of the minor.

The verified petition shall be accompanied by a certificate against forum shopping, which the petitioner must sign personally.

SEC. 5. *Summons; Personal Service on Respondent.* – If the court is satisfied that the petition is sufficient in form and substance, it shall direct the clerk of court to issue summons, which shall be served together with a copy of the petition personally on the respondent.

SEC. 6. *Motion to Dismiss.* – A motion to dismiss the petition is not allowed except on the ground of lack of jurisdiction over the subject matter or over the parties. Any other ground that might warrant the dismissal of the petition may be raised as an affirmative defense in the answer.

SEC. 7. *Verified Answer.* – The respondent shall file an answer to the petition, personally verified by him, within five days after service of summons and a copy of the petition.

SEC. 8. *Case Study; Duty of Social Worker.* – Upon the filing of the verified answer or the expiration of the period to file it, the court may order a social worker to make a case study of the minor and the parties and to submit a report and recommendation to the court at least three days before the scheduled pre-trial.

SEC. 9. *Notice of Mandatory Pre-trial.* – Within 15 days after the filing of the answer or the expiration of the period to file answer, the court shall issue an order:

- (1) fixing a date for the pre-trial conference;
- (2) directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure receipt thereof by the adverse party at least three days before the date of pre-trial; and
- (3) requiring the respondent to present the minor before the court.

The notice of its order shall be served separately on both the parties and their respective counsels.

The pre-trial is mandatory.

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SEC. 10. Contents of Pre-trial Brief. – The pre-trial brief shall contain the following:

- (a) A statement of the willingness of the parties to enter into agreements that may be allowed by law, indicating its terms;
- (b) A concise statement of their respective claims together with the applicable laws and authorities;
- (c) Admitted facts and proposed stipulations of facts;
- (d) The disputed factual and legal issues;
- (e) All the evidence to be presented, briefly stating or describing its nature and purpose;
- (f) The number and names of the witnesses and their respective affidavits which shall serve as the affiant's testimony on direct examination; and
- (g) Such other matters as the court may require to be included in the pre-trial brief.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial.

SEC. 11. Effect of Failure to Appear at the Pre-trial.

- (a) If the petitioner fails to appear personally at the pre-trial, the case shall be dismissed, unless his counselor or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.
- (b) If the respondent has filed his answer but fails to appear at the pre-trial, the petitioner shall be allowed to present his evidence *ex parte*. The court shall then render judgment on the basis of the pleadings and the evidence thus presented.

SEC. 12. What may be Done at Pre-trial. – At the pre-trial, the parties may agree on the custody of the minor. If the parties fail to agree, the court may refer the matter to a mediator who shall have five days to effect an agreement between the parties. If the issue is not settled through mediation, the court shall proceed with the pre-trial conference, on which occasion it shall consider such other matters as may aid in the prompt disposition of the petition.

SEC. 13. Provisional Order Awarding Custody. – After an answer has been filed or after expiration of the period to file it, the court may issue a provisional order awarding custody of the minor. As far as practicable, the following order of preference shall be observed in the award of custody:

- (a) Both parents jointly;
- (b) Either parent, taking into account all relevant considerations, especially the choice of the minor over seven years of age and of sufficient discernment, unless the parent chosen is unfit;
- (c) The grandparent, or if there are several grandparents, the grandparent chosen by the minor over seven years of age and of sufficient discernment, unless the grandparent chosen is unfit or disqualified;
- (d) The eldest brother or sister over 21 years of age, unless he or she is unfit or disqualified;
- (e) The actual custodian of the minor over 21 years of age, unless the former is unfit or disqualified; or
- (f) Any other person or institution the court may deem suitable to provide proper care and guidance for the minor.

SEC. 14. Factors to Consider in Determining Custody. – In awarding custody, the court shall consider the best interests of the minor and shall give paramount consideration to his material and moral welfare. The best interests of the minor refer to the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the minor encouraging to his physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the minor.

The court shall also consider the following:

- (a) Any extrajudicial agreement which the parties may have bound themselves to comply with respecting the rights of the minor to maintain direct contact with the non-custodial parent on a regular basis, except when there is an existing threat or danger of physical, mental, sexual or emotional violence which endangers the safety and best interests of the minor;
- (b) The desire and ability of one parent to foster an open and loving relationship between the minor and the other parent;
- (c) The health, safety and welfare of the minor;
- (d) Any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the minor, including anyone courting the parent;
- (e) The nature and frequency of contact with both parents;
- (f) Habitual use of alcohol, dangerous drugs or regulated substances;
- (g) Marital misconduct;
- (h) The most suitable physical, emotional, spiritual, psychological and educational environment for the holistic development and growth of the minor; and
- (i) The preference of the minor over seven years of age and of sufficient discernment, unless the parent chosen is unfit.

SEC. 15. *Temporary Visitation Rights.* – The court shall provide in its order awarding provisional custody appropriate visitation rights to the non-custodial parent or parents, unless the court finds said parent or parents unfit or disqualified.

The temporary custodian shall give the court and non-custodial parent or parents at least five days' notice of any plan to change the residence of the minor or take him out of his residence for more than three days provided it does not prejudice the visitation rights of the non-custodial parent or parents.

SEC. 16. *Hold Departure Order.* – The minor child subject of the petition shall not be brought out of the country without prior order from the court while the petition is pending.

The court, *motu proprio* or upon application under oath, may issue *ex parte* a hold departure order, addressed to the Bureau of Immigration and Deportation, directing it not to allow the departure of the minor from the Philippines without the permission of the court.

The Family Court issuing the hold departure order shall furnish the Department of Foreign Affairs and the Bureau of Immigration and Deportation of the Department of Justice a copy of the hold departure order within 24 hours from its issuance and through the fastest available means of transmittal.

The hold departure order shall contain the following information:

- (a) The complete name (including the middle name), the date and place of birth, the nationality and the place of last residence of the person against whom a hold departure order has been issued or whose departure from the country has been enjoined;
- (b) The complete title and docket number of the case in which the hold departure order was issued;
- (c) The specific nature of the case;
- (d) The date of the hold departure order; and
- (e) A recent photograph, if available, of the party against whom a hold departure order has been issued or whose departure from the country has been enjoined.

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The court may recall the hold departure order *motu proprio*, or upon verified motion of any of the parties after summary hearing, subject to such terms and conditions as may be necessary for the best interests of the minor.

SEC. 17. Protection Order. – The court may issue a Protection Order requiring any person:

- (a) To stay away from the home, school, business, or place of employment of the minor, other parent or any other party, or from any other specific place designated by the court;
- (b) To cease and desist from harassing, intimidating, or threatening such minor or the other parent or any person to whom custody of the minor is awarded;
- (c) To refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the minor;
- (d) To permit a parent, or a party entitled to visitation by a court order or a separation agreement, to visit the minor at stated periods;
- (e) To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; and
- (f) To comply with such other orders as are necessary for the protection of the minor.

SEC. 18. Judgment. – After trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor.

If it appears that both parties are unfit to have the care and custody of the minor, the court may designate either the paternal or maternal grandparent of the minor, or his oldest brother or sister, or any reputable person to take charge of such minor, or commit him to any suitable home for children.

In its judgment, the court may order either or both parents to give an amount necessary for the support, maintenance and education of the minor, irrespective of who may be its custodian. In determining the amount of support, the court may consider the following factors:

- (1) the financial resources of the custodial and non-custodial parent and those of the minor;
- (2) the physical and emotional health, special needs, and aptitude of the minor;
- (3) the standard of living the minor has been accustomed to; and
- (4) the non-monetary contributions that the parents would make toward the care and well-being of the minor.

The court may also issue any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody.

SEC. 19. Appeal. – No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within 15 days from notice of judgment.

An aggrieved party may appeal from the decision by filing a Notice of Appeal within 15 days from notice of the denial of the motion for reconsideration or new trial and serving a copy thereof on the adverse parties.

SEC. 20. Petition for Writ of Habeas Corpus. – A verified petition for a writ of *habeas corpus* involving custody of minors shall be filed with the Family Court. The writ shall be enforceable within its judicial region to which the Family Court belongs.

However, the petition may be filed with the regular court in the absence of the presiding judge of the Family Court, *provided, however*, that the regular court shall refer the case to the Family Court as soon as its presiding judge returns to duty.

The petition may also be filed with the appropriate regular courts in places where there are no Family Courts.

The writ issued by the Family Court or the regular court shall be enforceable in the judicial region where they belong.

The petition may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines. The writ may be made returnable to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits.

Upon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision.

SEC. 21. Confidentiality of Proceedings. – The hearings on custody of minors may, at the discretion of the court, be closed to the public and the records of the case shall not be released to non-parties without its approval.

SEC. 22. Effectivity. – This Rule shall take effect on May 15, 2003 following its publication in a newspaper of general circulation not later than April 30, 2003.

ADMINISTRATIVE MATTER No. 04-10-11-SC
RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN
Effective November 15, 2004

SECTION 1. *Applicability.* – This Rule shall apply to petitions for protection orders in cases of violence against women and their children under Republic Act No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004.”

The Rules of Court shall apply suppletorily.

SEC. 2. *Construction.* – This Rule shall be liberally construed to promote its objectives pursuant to the principles of restorative justice.

SEC. 3. *Objectives.* – The objectives of this Rule are:

- (a) To protect the rights of the family and its members particularly women and children from violence and threats to their personal safety and security;
- (b) To enable the courts to manage and monitor cases involving violence against women and children and the members of their family or household;
- (c) To prevent any disruption in the daily lives of the offended parties and assist them to regain control of their lives;
- (d) To ensure that treatment is provided for the offended parties and offenders; and
- (e) To hold the offenders accountable for their acts.

SEC. 4. *Definitions.* – As used in this Rule:

- (a) *Violence against women and their children* refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or a woman with whom the person has or had a dating or sexual relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.
- (b) *Children* refers to persons below 18 years of age or older but are unable to fully take care of themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. It includes the biological children of the offended party and other children under her care.
- (c) *Members of the family* shall include husband and wife, parents and children, the ascendants or descendants, brothers and sisters, whether of the full or half blood, whether living together or not.
- (d) *Members of the household* shall include:
 - (1) Spouses, common-law spouses, former spouses, whether living together or not, and their children;
 - (2) Relatives by consanguinity or affinity up to the sixth civil degree, including stepparents and stepchildren living together in the same house; and
 - (3) Domestic helpers in the service of the employer, whose services are usually necessary or desirable for the maintenance and enjoyment of the home, who attend to the personal comfort and convenience of the members of the household.
- (e) *Battery* refers to an act of inflicting physical harm upon the woman or her child resulting in physical and psychological or emotional distress.

- (f) *Sexual violence* refers to an act which is sexual in nature committed against a woman or her child. It includes the following:
- (1) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing the offended party to watch obscene publications and indecent shows or to do indecent acts or make films thereof, forcing the wife and mistress or lover to live in the conjugal home or sleep together in the same room with the abuser;
 - (2) acts causing or attempting to cause the offended party to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion; and
 - (3) prostitution of the woman or her child.
- (g) *Psychological violence* refers to acts or omissions causing or likely to cause mental or emotional suffering of the offended party such as intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the offended party to witness the physical, sexual or psychological abuse of a member of the family to which the offended party belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody or visitation of common children.
- (h) *Economic abuse* refers to acts that make or attempt to make a woman financially dependent which includes the following:
- (1) withdrawing of financial support or preventing the offended party from engaging in any legitimate profession, occupation, business or activity, except in cases where the other spouse or partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
 - (2) depriving or threatening to deprive financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
 - (3) destroying household property; and
 - (4) controlling the offended party's own money or property or solely controlling the conjugal money or property.
- (i) *Stalking* refers to an intentional act of knowingly and without lawful justification, following the woman or her child or placing the woman or her child under surveillance directly or indirectly or through a combination thereof.
- (j) *Sexual relationship* refers to a single sexual act which may or may not result in the bearing of a common child;
- (k) *Program of intervention for offended parties* refers to a specialized program that provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education, or training.
- (l) *Program of intervention for offenders* refers to court-ordered treatment of offenders given by agencies or persons who have demonstrated expertise and experience in anger control, management of alcohol, substance abuse and other forms of intervention to stop violence.
- (m) *Safe Place or Shelter* refers to any home or institution managed by the Department of Social Welfare and Development (DSWD) or by any agency or voluntary organization accredited by the DSWD or any other suitable place the resident of which is willing to receive the offended party temporarily.
- (n) *Safety plan* refers to a written plan of action prepared by a social worker and approved by the court to secure the protection of the offended party.
- (o) *Protection order* is an order issued by the court to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary relief. Its purpose is to

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safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life.

- (p) *Barangay Protection Order* (BPO) refers to the protection order issued by the *Punong Barangay*, or in his absence the *Barangay Kagawad*, ordering the perpetrator to desist from committing acts of violence against the family or household members particularly women and their children under Sections 5(a) and 5(b) of RA No. 9262.
- (q) *Temporary Protection Order* (TPO) refers to the protection order issued by the court on the filing of the application and after *ex parte* determination of its need. It may also be issued in the course of a hearing, *motu proprio* or upon motion.
- (r) *Permanent Protection Order* (PPO) refers to the protection order issued by the court after notice and hearing.
- (s) *Live-link television testimony* refers to the testimony of a child, who is an eyewitness or offended party in violence against women and their children, taken in a room outside the courtroom and televised to the courtroom by live-link television, as provided for in Section 25 of the Rule on Examination of a Child Witness. It may also refer to the live-link testimony of an adult female victim of violence, which may be allowed at the discretion of the court.

SEC. 5. Acts of Violence Against Women and Their Children under RA No. 9262. – Violence against women and their children is committed through any of the following acts:

- (a) Causing, threatening or attempting to cause physical harm to the woman or her child;
- (b) Placing the woman or her child in fear of imminent physical harm;
- (c) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or her child.

This shall include, but is not limited to, the following acts committed with the purpose or effect of controlling or restricting the movement or conduct of the woman or her child:

- (1) Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;
 - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - (3) Depriving or threatening to deprive the woman or her child of a legal right; and
 - (4) Preventing the woman from engaging in any legitimate profession, occupation, business or activity except in cases where the spouse or partner objects on valid, serious and moral grounds, or controlling the victim's own money or property, or solely controlling the conjugal or common money or property;
- (d) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
 - (e) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
 - (f) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child.

This shall include, but is not limited to, the following acts:

- (1) Stalking or following the woman or her child in public or private places;
 - (2) Peering in the window or lingering outside the residence of the woman or her child;
 - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or child; and
 - (5) Engaging in any form of harassment or violence; or
- (g) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of a minor child or denial of access to the woman's child.

SEC. 6. Remedies of Offended Party. – The offended party may file a separate petition for protection order without claiming damages. The offended party may also pursue other remedies in accordance with Part II of this Rule by the filing of any of the following:

- (a) Criminal action;
- (b) Criminal action with reservation of a separate civil action; or
- (c) Civil action for damages.

PART I
PETITION FOR PROTECTION ORDER

SECTION 7. Form of Petition. – A petition for protection order shall be in writing, signed and verified by the petitioner. It shall be accompanied by a certificate of non-forum shopping, which the petitioner must sign personally.

SEC. 8. Who may File Petition. – A petition for protection order may be filed by any of the following:

- (a) The offended party;
- (b) Parents or guardians of the offended party;
- (c) Ascendants, descendants or collateral relatives of the offended party within the fourth civil degree of consanguinity or affinity;
- (d) Officers or social workers of the Department of Social Welfare and Development (DSWD) or social workers of local government units (LGUs);
- (e) Police officers, preferably those in charge of women and children's desks;
- (f) *Punong Barangay* or *Barangay Kagawad*;
- (g) Lawyer, counselor, therapist or healthcare provider of the petitioner; or
- (h) At least two concerned, responsible citizens of the place where the violence against women and their children occurred and who have personal knowledge of the offense committed.

The filing of a petition for protection order by the offended party suspends the right of all other authorized parties to file similar petitions. A petition filed by the offended party after the filing of a similar petition by an authorized party shall not be dismissed but shall be consolidated with the petition filed earlier.

SEC. 9. Where to File the Petition. – The verified petition for protection order may be filed with the Family Court of the place where the offended party resides. If there is no existing Family Court, it may be filed with the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court with territorial jurisdiction over the place of residence of the offended party.

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Sec. 10. Contents of the Petition. – The petition filed by the offended party shall contain the following:

- (a) The name, age and residence of the offended party;
- (b) The name, age and residence of the respondent;
- (c) A description of the relationship between the offended party and the respondent;
- (d) A complete description of the alleged act constituting violence including the date, time and place of occurrence;
- (e) A request for counsel and the reasons for such;
- (f) A request for waiver of application fees;
- (g) The relief from violence prayed for, including protection orders to cover any designated family or household member who consents to such relief.

If the petitioner is not the offended party, the petition shall be accompanied by an affidavit of the petitioner attesting to the following:

- (a) facts showing the authority of the petitioner to file the petition;
- (b) circumstances of the abuse suffered by the offended party; and
- (c) circumstances of consent given by or refusal to consent of the offended party to file the petition.

When disclosure of the address will pose danger to the life of the offended party, it shall be so stated in the petition. In such a case, the petitioner shall attest that the offended party is residing in the municipality or city over which the court has territorial jurisdiction, and shall provide a mailing address for purposes of service processing.

Sec. 11. Reliefs Available to the Offended Party. – The protection order shall include any, some or all of the following reliefs:

- (a) Prohibiting the respondent from threatening to commit or committing, personally or through another, acts of violence against the offended party;
- (b) Prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating in any form with the offended party, either directly or indirectly;
- (c) Removing and excluding the respondent from the residence of the offended party, regardless of ownership of the residence, either temporarily for the purpose of protecting the offended party, or permanently where no property rights are violated. If the respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until the respondent has gathered his things and escort him from the residence;
- (d) Requiring the respondent to stay away from the offended party and any designated family or household member at a distance specified by the court;
- (e) Requiring the respondent to stay away from the residence, school, place of employment or any specified place frequented regularly by the offended party and any designated family or household member;
- (f) Directing lawful possession and use by the offended party of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the offended party to the residence of the parties to ensure that the offended party is safely restored to the possession of the automobile and other essential personal effects;
- (g) Ordering temporary or permanent custody of the child/children with the offended party, taking into consideration the best interests of the child. An offended party who is suffering from Battered Woman Syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the batterer of a woman who is suffering from Battered Woman Syndrome;

- (h) Directing the respondent to provide support to the woman and/or her child, if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by his employer and to automatically remit it directly to the offended party. Failure to withhold, remit or any delay in the remittance of support to the offended party without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (i) Prohibiting the respondent from carrying or possessing any firearm or deadly weapon and ordering him to surrender the same to the court for appropriate disposition, including revocation of license and disqualification to apply for any license to carry or possess a firearm. If the respondent is a law enforcement agent, the court shall order him to surrender his firearm and shall direct the appropriate authority to investigate him and take appropriate action thereon;
- (j) Directing the DSWD or any appropriate agency to prepare a program of intervention for the offended party that provides advocacy, temporary shelter, crisis intervention, treatment, therapy, counseling, education, training and other social services that the offended party may need;
- (k) Requiring the respondent to receive professional counseling from agencies or persons who have demonstrated expertise and experience in anger control, management of alcohol, substance abuse and other forms of intervention to stop violence. The program of intervention for offenders must be approved by the court. The agency or person is required to provide the court with regular reports of the progress and result of professional counseling, for which the respondent may be ordered to pay; and
- (l) Awarding the offended party actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income; and compensatory, moral, and exemplary damages, subject to Sections 26a and 35 of this Rule.

The court may grant such other forms of relief to protect the offended party and any designated family or household member who consents to such relief.

SEC. 12. Duties of the Clerk of Court. – The clerk of court shall assist the petitioner or the offended party by:

- (a) Communicating in a language understood by the petitioner;
- (b) Providing the petitioner with a standard petition form written in English with translation into the major local dialects, including the instructions for its accomplishment;
- (c) Ensuring the privacy of the offended party to the extent practicable while the form is being accomplished;
- (d) Advising the petitioner on the availability of legal assistance from the Public Attorney’s Office of the Department of Justice or any public legal assistance office;
- (e) Advising the petitioner on entitlement of support services from the DSWD and LGUs;
- (f) Advising the petitioner on the availability of an affidavit of indigency in lieu of payment of the filing fee;
- (g) Providing the offended party with a certified copy of the protection order as well as giving the necessary information regarding the process for its service and enforcement;
- (h) Making available informative materials on violence against women and their children, including their rights as victims; and
- (i) Informing the offended party that compensation is available from the Department of Justice Board of Claims in accordance with the provisions of RA No. 7309 (1992), otherwise known as “An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crime and for Other Purposes.”

SEC. 13. Exemption from Payment of Docket Fee and Other Expenses. – If the offended party is an indigent or there is an immediate necessity due to imminent danger or threat of danger to act on a petition for a protection order,

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the court shall accept the petition without payment of the filing fee and other fees and of transcripts of stenographic notes.

SEC. 14. Raffle in Multi-sala Courts. – The petition filed in a multi-sala court shall be raffled without delay.

If an action contains an application for a protection order, it shall be the subject of a special raffle.

SEC. 15. Ex parte Issuance of Temporary Protection Order.

- (a) If the court is satisfied from the verified allegations of the petition that there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur, the court may issue *ex parte* a temporary protection order which shall be effective for 30 days from service on the party or person sought to be enjoined.
- (b) The temporary protection order shall include notice of the date of the preliminary conference and hearing on the merits. The following statements must be printed in bold-faced type or in capital letters on the protection order issued by the court:

Violation of this order is punishable by law.

If the respondent appears without counsel on the date of the preliminary conference and hearing on the merits on the issuance of a Permanent Protection Order, the court shall not reschedule or postpone the preliminary conference and hearing but shall appoint a lawyer for the respondent and immediately proceed with said hearing.

If the respondent fails to appear on the date of the preliminary conference and hearing on the merits despite proper notice, the court shall allow *ex parte* presentation of evidence by the petitioner and render judgment on the basis of the pleadings and evidence on record. No delegation of the reception of evidence shall be allowed.

- (c) The court shall likewise order the immediate issuance of a notice requiring the respondent to file an opposition within five days from service. It shall further order service of (1) the notices to file opposition and of dates of the preliminary conference and hearing, (2) the protection order, and (3) copy of the petition, upon the respondent by the court sheriff, or any person authorized by the court, who may obtain the assistance of law enforcement officers.

SEC. 16. Notice where no Temporary Protection Order is Issued Ex parte. – Where no temporary protection order is issued *ex parte*, the clerk of court shall forthwith issue the corresponding notice to the respondent requiring him to file an opposition within five days. The date of the preliminary conference and hearing on the merits shall be indicated on the notice.

Where the notice could not be served personally or by substituted service despite diligent efforts, Rule 14 of the Rules of Court shall apply as far as practicable.

SEC. 17. Enforceability of Protection Order. – The protection order issued by the court shall be enforceable anywhere in the Philippines. Violation of the protection order shall be punishable by a fine ranging from Five Thousand Pesos (P5,000) to Fifty Thousand Pesos (P50,000) or imprisonment of six months or both.

SEC. 18. Duties of the Law Enforcement Officer. – Upon the receipt of the protection order, the law enforcement officer shall use all reasonable means to enforce the order and prevent further violence, such as by:

- (a) Taking any action necessary to provide for the safety of the offended party;
- (b) Taking custody of the weapon used in the violence against women and their children;
- (c) Transporting or obtaining transportation for the offended party to a safe place;

- (d) Assisting the offended party in obtaining medical treatment, including transportation to a medical clinic or hospital; and
- (e) Assisting the offended party in removing essential personal effects from the residence.

The law enforcement officer shall submit a written report to the court within 24 hours from receipt setting forth compliance with such order.

SEC. 19. Duties of Social Worker. – The social worker assigned by the court shall assist the petitioner seeking a protection order by:

- (a) Preparing a case study and a program of intervention for the offended party, including her children, and referring them to DSWD havens, crisis intervention centers and private entities rendering appropriate social services;
- (b) Formulating a safety plan which shall be approved by the court; and
- (c) Monitoring the measures indicated in the protection order.

SEC. 20. Opposition to Petition.

- (a) The respondent may file an opposition to the petition which he himself shall verify. It must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.
- (b) Respondent shall not include in the opposition any counterclaim, cross-claim or third-party complaint, but any cause of action which could be the subject thereof may be litigated in a separate civil action.

SEC. 21. Effect of Failure to File an Opposition. – If the respondent fails to file an opposition to the petition within the period above provided, the court, *motu proprio* or on motion of the petitioner, shall issue the corresponding order as may be warranted by the facts alleged in the petition.

SEC. 22. Prohibited Pleadings and Motions. – The following pleadings, motions or petitions shall not be allowed:

- (a) Motion to dismiss the petition except on the ground of lack of jurisdiction over the subject matter or over the parties;
- (b) Motion for extension of time to file opposition, affidavit, position paper and other pleadings;
- (c) Dilatory motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Third-party complaint;
- (f) Reply;
- (g) Motion to declare the respondent in default;
- (h) Intervention;
- (i) Memorandum;
- (j) Petition for *certiorari*, *mandamus* or prohibition against any interlocutory order issued by the court;
- (k) Motion for new trial, or for reconsideration of a protection order, or for reopening of trial; and
- (l) Petition for relief from judgment.

SEC. 23. Preliminary Conference.

- (a) *When conducted.* – A preliminary conference, which is mandatory, shall be held on the date indicated in the notice.

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(b) *Notice.* – The notice shall be served on the parties, including the offended party, who shall be required to notify their respective counsels, if any. The parties shall appear in person at the preliminary conference and submit their position papers setting forth the law and the facts relied upon by them.

(c) *Nature and purpose.* – The court shall consider:

- (1) The propriety of issuing a protection order. The court shall not deny the issuance of a protection order due to the lapse of time between the act of violence and the filing of the petition, subject to Section 24, RA No. 9262. The issuance of a barangay protection order or the pendency of an application for a barangay protection order shall not preclude a petitioner from applying for, or the court from granting, a protection order;
- (2) The simplification of the issues; and
- (3) Such other matters as may aid in the prompt disposition of the petition.

The court shall not refer the case or any issue thereof to a mediator.

(d) *Prohibited compromise.* – The court shall not allow compromise on any act constituting the crime of violence against women and their children and other prohibited matters, such as the following:

- (1) The civil status of persons;
- (2) The validity of a marriage, declaration of nullity or annulment of a marriage or of a legal separation;
- (3) Any ground for declaration of nullity or annulment of a marriage or of legal separation;
- (4) Future support;
- (5) The jurisdiction of courts; and
- (6) Future legitime.

(e) *Effect of failure to appear.*

- (1) If the petitioner fails to appear personally, the petition shall be dismissed unless the counsel or a duly authorized representative of the petitioner appears in court and gives a justifiable reason for the non-appearance of the petitioner; however, if the petition is filed by a person other than the offended party, it shall not be dismissed if the offended party is present and does not agree to its dismissal.
- (2) If the respondent appears without counsel, the court shall not reschedule or postpone the conference but shall appoint a lawyer for the respondent and immediately proceed therewith; and
- (3) If the respondent has filed his opposition but fails to appear despite proper notice, the petitioner shall be allowed to present evidence *ex parte*. The court shall then render judgment on the basis of the pleadings and evidence on record.

SEC. 24. Protection Order Issued After Preliminary Conference. – Within five days after the termination of the preliminary conference, the court may issue a protection order, based on the pleadings and stipulations or admissions made by the parties.

SEC. 25. Order for Further Hearing. – In case the court determines the need for further hearing, it may issue an order containing the following:

- (a) Facts undisputed and admitted;
- (b) Factual and legal issues to be resolved;
- (c) Evidence, including objects and documents, that have been marked and will be presented;
- (d) Names of witnesses who will be ordered to present their direct testimonies in the form of affidavits; and

- (e) Schedule of the presentation of evidence by both parties which shall be done in one day, to the extent possible, within the 30-day period of the effectivity of the temporary protection order issued.

SEC. 26. Hearing.

- (a) *Rule applicable.* – The Revised Rule on Summary Procedure shall apply as far as practicable.
- (b) *Period to hear petition.* – The court shall, to the extent possible, endeavor to conduct in one day the hearing on the merits for the issuance of a permanent protection order. Where the court is unable to finish the hearing within one day and the temporary protection order issued is due to expire, it may extend or renew the temporary protection order for a period of 30 days each time until final judgment is rendered. The court may modify the extended or renewed temporary protection order as may be necessary to meet the needs of the parties.
- (c) *Evidence of history of abusive conduct.* – The court may allow the introduction of any evidence of history of abusive conduct of a respondent even if the same was not directed against the victim, provided the same is relevant.
- (d) *Exclusion of persons from courtroom.* – The court may order the exclusion from the courtroom of all persons who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court:
 - (1) would not enhance the ascertainment of truth;
 - (2) would cause the party psychological harm or inability to effectively communicate due to embarrassment, fear or timidity;
 - (3) would violate the right of a party to privacy; or
 - (4) would be offensive to decency or public morals.

SEC. 27. Prohibited Acts. – The court hearing a petition for a protection order shall not order, direct, force or in any way unduly influence the applicant for a protection order to compromise or abandon any of the reliefs sought in the petition for protection under the law and this Rule. Failure to comply with this Section shall render the judge administratively liable.

SEC. 28. Availability of Live-link Television to Eyewitnesses or Victims.

- (a) The testimony of a child, as an eyewitness or an offended party in an act of violence against women and their children, may be taken by live-link television. The application for an order for live-link testimony, the factors to be considered by the court in granting or denying the use of live-link television and the procedure involved in the actual taking of the testimony shall be followed as provided for in Section 25 of the Rule on Examination of a Child Witness.
- (b) The testimony of an adult female, victim of violence, may likewise be taken by live-link television, if it appears that she would suffer trauma if she were to testify in the presence of the offender or perpetrator.

SEC. 29. Period to Decide.

- (a) The court shall decide the petition within 30 days after termination of the hearing on the merits.
- (b) Where no hearing has been conducted, the court shall decide the petition within 10 days after the termination of the preliminary conference.

SEC. 30. Judgment. – If the court finds the petition meritorious, it shall render judgment granting the offended party permanent protection against acts of violence and such other necessary reliefs provided in Section 11 of this Rule. The court shall not deny the issuance of a permanent protection order due to the lapse of time between

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the act of violence and the filing of the petition, subject to Section 24, RA No. 9262. The judgment shall be immediately executory.

SEC. 31. Appeal. – Any aggrieved party may appeal by filing a notice of appeal with the court that rendered the final order or judgment within 15 days from notice and serving a copy thereof upon the adverse party. The appeal shall not stay the enforcement of the final order or judgment.

PART II

APPLICATION FOR PROTECTION ORDER AS AN INCIDENT IN A CRIMINAL OR CIVIL ACTION AND OTHER REMEDIES

SECTION 32. Applicability to Applications for Protection Orders Filed as Incidents in Civil or Criminal Cases. – The foregoing provisions shall also apply to applications for protection orders filed as incidents in criminal or civil actions.

SEC. 33. When Petition may Proceed Separately from or be Deemed Instituted with Criminal Action.

- (a) An offended party may file a petition for protection order ahead of a criminal action arising from the same act. The same shall proceed separately from the criminal action and shall require only a preponderance of evidence. Upon motion of the petitioner, the court may consolidate the petition with the criminal action.
- (b) Where the offended party chooses to file a criminal action, the petition for protection order is deemed instituted with the criminal action, unless the offended party reserves the right to institute it separately.

SEC. 34. When Petition may Proceed Separately from or be Deemed Instituted with the Civil Action for Damages.

- (a) An offended party may file a petition for protection order ahead of a civil action for damages arising from the same act. The same shall proceed separately from the civil action and shall require only a preponderance of evidence. Upon motion of the petitioner, the court may consolidate the petition with the civil action.
- (b) Where the offended party chooses to file a civil action for damages, the petition for protection order is deemed instituted with the civil action.

SEC. 35. Prosecution of Civil Action for Damages. – The civil action for damages shall be governed by the 1997 Rules of Civil Procedure. However, the offended party cannot recover the same damages twice for the same act or omission.

SEC. 36. Prosecution of Criminal Action. – An act of violence covered by RA No. 9262 constituting a criminal offense shall subject the offender to criminal proceedings, which shall be governed by the Revised Rules of Criminal Procedure.

Where the judgment of conviction declares that the guilt of the accused has been proved beyond reasonable doubt, the permanent protection order shall issue as a matter of course.

Where the judgment of acquittal declares that the quantum of evidence is not enough to sustain a conviction beyond reasonable doubt, the court shall determine whether or not to issue a permanent protection order.

Where the judgment of acquittal expressly declares that the basis of the offender's criminal liability did not exist, a permanent protection order shall not issue. A temporary protection order that may have been earlier issued shall be dissolved.

SEC. 37. Bond to Keep the Peace. – The court may also order any person, against whom a permanent protection order is issued, to give a bond to keep the peace. It shall be the duty of said person to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented, and that in

case such violence is committed they will pay the amount determined by the court in its judgment. The court in its discretion shall fix the duration of the bond.

PART III
COMMON PROVISIONS

SECTION 38. *Reproduction of Evidence.* – An order granting the issuance of a permanent protection order is without prejudice to a trial on the merits of the criminal or civil action involving violence against women and their children. The evidence adduced during the hearing for the issuance of a permanent protection order may, upon motion, be reproduced in the criminal or civil action without prejudice to the cross-examination of witnesses and presentation of additional evidence.

SEC. 39. *Jurisdiction and Venue for Criminal Actions or Civil Actions.* – The Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children regardless of the amount of damages claimed. The action may also be filed with the appropriate regional trial courts in places where there are no Family Courts, at the option of the offended party.

SEC. 40. *Privacy and Confidentiality of Proceedings.* – All hearings of cases of violence against women and their children shall be conducted in a manner consistent with the dignity of women and their children and respect for their privacy.

Records of the cases shall be treated with utmost confidentiality. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer or other identifying information of the parties or an immediate family or household member, without their consent or without authority of the court, shall be liable for contempt of court and shall suffer the penalty of one year imprisonment and a fine of not more than Five Hundred Thousand Pesos (P500,000).

PART IV
BARANGAY PROTECTION ORDER

SECTION 41. *Venue.* – Applications for barangay protection orders shall observe the following rules on venue:

- (a) where the parties reside in the same *barangay*, the dispute shall be brought for settlement in said *barangay*;
- (b) where the parties reside in different *barangays* in the same city or municipality, the dispute shall be settled in the *barangay* where the respondent or any one of the respondents actually resides, at the choice of the complainant;
- (c) disputes arising at the workplace where the contending parties are employed or at the institution where such parties are enrolled for study, shall be brought in the *barangay* where such workplace or institution is located; and
- (d) any objection relating to venue shall be raised before the *Punong Barangay* during the proceedings before him. Failure to do so shall be deemed a waiver of such objections.

SEC. 42. *Where to file Complaint for Violation of a Barangay Protection Order.* – A complaint for violation of a Barangay Protection Order may be filed with any Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court that has territorial jurisdiction over the *barangay* which issued the said protection order.

SEC. 43. *Procedure.*

- (a) The complaint shall be accompanied by affidavits and other evidence proving the alleged violation;

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- (b) Upon receipt of the complaint, the court shall issue an order requiring the accused to submit within five days his counter-affidavit, the affidavits of his witnesses and other evidence in his behalf;
- (c) If the court, upon a consideration of the complaint, the counter-affidavits of the accused and other evidence submitted by the parties, finds no cause or ground to hold the accused for trial, it shall order the dismissal of the case; otherwise, it shall set the case for arraignment and trial;
- (d) Violation of a barangay protection order shall be punishable by imprisonment of 30 days without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed; and
- (e) A judgment of violation of a barangay protection order may be appealed to the regional trial court whose decision shall be final. An appeal from a judgment of violation of a barangay protection order shall not stay the enforcement of a protection order that might have been issued by the trial court during the trial.

SEC. 44. Issuance of Protection Order when Warranted; Contempt of Court for Violation. – During trial or upon judgment, the trial court may *motu proprio* issue a protection order when warranted. Violation of any protection order issued under this Section shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

SEC. 45. Effectivity. – This Rule shall take effect on November 15, 2004, following its publication in a newspaper of general circulation not later than October 30, 2004.

CHECKLIST FOR CLERK OF COURT

FOR USE FOR PETITIONS FOR PROTECTION ORDERS IN CASES OF VIOLENCE AGAINST WOMEN AND THEIR CHILDREN

To the Clerk of Court:

Pursuant to Section 12, Rule on Violence Against Women and Their Children, you are to assist the offended parties in accomplishing the petitions.

The form they will use is very simple and contains blanks to be filled.

To help them fill the blanks, you have been provided with a petition-checklist form which contains the common acts involving violence culled from actual cases locally and from judicial forms from foreign jurisdictions.

Study your checklist very well so that you will be able to help them fill out their forms, considering the probability that they may have difficulty in accomplishing the forms themselves.

Thank you.

The Committee
Revision of the Rules of Court

P E T I T I O N

WITH PRAYER FOR THE ISSUANCE OF A TEMPORARY PROTECTION ORDER

VIOLENCE AGAINST WOMEN AND THEIR CHILDREN (RA No. 9262)

Petition No. _____

① PERSON FILING THIS PETITION through counsel:

- Offended Party
- Representative of the offended party

ITEM	OFFENDED PARTY	REPRESENTATIVE
NAME		
AGE		
ADDRESS/OFFICE		
DIALECT SPOKEN		

(Note: If the offended party is staying at a DSWD or NGO shelter, do not give address of the shelter but give the address as of the date of the incident of violence against women and their children being complained of.)

② The OFFENDED PARTY is the:

- wife of the respondent
- former wife of the respondent
- common-law wife of the respondent
- former common-law wife of the respondent
- person being dated by the respondent
- person formerly being dated by the respondent
- person having a sexual relationship with the respondent
- person formerly having a sexual relationship with the respondent
- common child of mother and respondent
- child by nature of mother
- (specify other relationship) _____.

The representative is:

- Parent(s) of the offended party
- Guardian of the offended party
- Ascendant, descendant or relative within the fourth civil degree of consanguinity or affinity of the offended party

- Officer or social worker of Department of Social Welfare and Development (DSWD)
- Local Government Unit (LGU)
- Police officer
- In-charge of women and children's desks
- Other police assignment
- Punong barangay* of the *barangay* where the act of violence against women and their children occurred
- At least two concerned, responsible citizens of the place where the act of violence against women and their children occurred
- Lawyer of the offended party
- Counselor of the offended party
- Therapist of the offended party
- Healthcare provider of the offended party

① ③ RESPONDENT:

NAME _____ AGE _____

ADDRESS _____

DIALECT SPOKEN _____

① ④ Get details of the **most recent event** where THE OFFENDED PARTY suffered an act of violence against women and their children which resulted in **PHYSICAL INJURIES**:

WHEN: (Month) _____ (Day) _____, 20 _____ (Year)

TIME: _____ A.M./P.M.

WHERE: _____

Check the parts of the body in the diagram in the next pages to indicate any physical injuries of the victim which are in plain view. Even if there is a medico-legal report, copy of which should be attached to the checklist, continue to check the diagrams.

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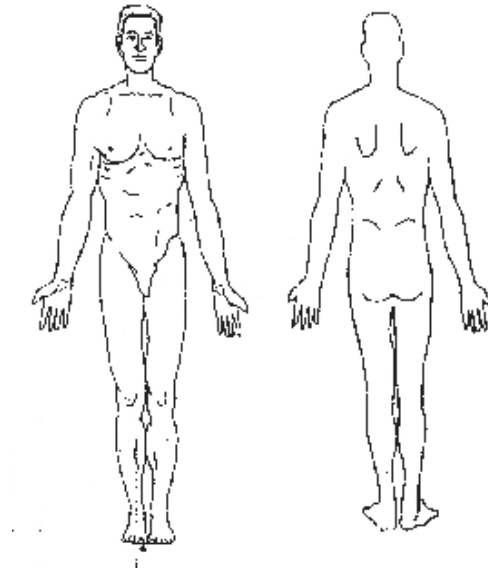
The offended party sustained the following injuries in the front as follows:



The offended party sustained the following injuries in the back as follows:



The offended party – male minor child suffered the following injuries:



These injuries resulted when respondent physically harmed the offended party as follows (Section 5[a], Rule):

- boxed the offended party repeatedly
- grabbed and pushed or shoved the offended party to the floor or the ground
- dragged the offended party with a rope around
 - her
 - his neck, torso, hands or legs
- kicked the offended party
- punched the offended party
- slapped the offended party
- wrestled with the offended party
- beat the offended party with
 - firearm
 - fists
 - chair
 - club
 - (specify other weapon): _____
- burned the offended party
- poisoned the offended party
- ran over the offended party with a motor vehicle
- shot the offended party with a firearm
- stabbed the offended party with a knife
- strangled the offended party
- threw the offended party
 - against the car
 - against the door

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- against the wall
- down the stairs
- through the window
- from a high place (*specify*): _____
- threw at the offended party
 - chairs
 - computer and/or computer accessories
 - flatiron
 - kitchen utensils
 - plates and other chinaware
 - radio/stereo
 - (*specify other object*): _____

Or, these injuries resulted when respondent inflicted on the offended party any, some or all of the following acts of sexual violence (Sections 5[a], 5[c] and 5[e], Rule):

- rape
- oral sex
- anal sex
- intercourse with the offended party
 - while she was sick
 - immediately following her discharge from a hospital after giving birth
- an object was inserted in the offended party's
 - vagina
 - rectum
- intercourse accompanied by
 - beatings
 - torture and bondage
- (*specify other degrading sexual practice*): _____

① 5 Get details of the **most recent event** that caused the offended party to fear **IMMEDIATE AND IMMINENT DANGER** of violence against women and their children:

WHEN: (*Month*) _____ (*Day*) _____, 20 ____ (*Year*)

TIME: _____ A.M./P.M.

WHERE: _____

The respondent threatened the offended party (Section 5[b], Rule):

- with death by threatening
- to burn her him
- to drag her him with a rope tied around her/his neck, torso, hands and legs
- to poison her him

- to run over her/him with a motor vehicle
- to shoot her /him with a firearm which was pointed at the offended party
- to stab her /him with a knife
- to strangle her /him
- (*specify other violent act*): _____
- with physical harm by threatening
 - to beat her /him with
 - his firearm
 - his fists
 - a chair
 - a club
 - (*specify other weapon*): _____
- to throw her / him
 - against the car
 - against the door
 - against the wall
 - down the stairs
 - through the window
 - from a high place (*specify*): _____

①⑥ Get details of the **most recent event** where the offended party suffered an act of violence against women and their children which resulted in **PSYCHOLOGICAL VIOLENCE AND/OR ECONOMIC ABUSE**:

WHEN: (*Month*) _____ (*Day*) _____, 20 _____ (*Year*)

TIME: _____ A.M./P.M.

WHERE: _____

Respondent has:

- belittled, berated, cursed, and insulted the offended party;
- called the offended party all types of vile and indecent names in the presence of others;
- avowed his loss of affection and desire to be rid of the offended party;
- denied he was related to the offended party;
- annoyed and molested the offended party;
- stalked the offended party in her / his
 - school
 - place of work
 - other frequented places (*specify*): _____ ;
- threatened to remove the offended party's minor child from the residence;
- cut off all financial allowances to the offended party;
- seized and withheld possession of the offended party's

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- clothing
- household furnishings
- personal effects
- pet animal(s)
- (specify other property): _____ ;
- destroyed the offended party's
 - clothing
 - household furnishings
 - personal effects
 - pet animal(s)
 - (specify other property): _____ ;
- Other threatening verbal statements uttered: _____
_____ .

⑦ Describe weapons used or threatened to be used: _____

⑧ The offended party's designated family and household members:

No.	NAME	AGE	RELATIONSHIP
1			
2			
3			
4			
5			
6			

⑨ Residence where the offended party stays (Sec 11[3]) and, use of automobile, if any (Section 11[6]):

Residence	<input type="checkbox"/> Owned	<input type="checkbox"/> By offended party and respondent	<input type="checkbox"/> By offended party	<input type="checkbox"/> By respondent	<input type="checkbox"/> By family of offended party	<input type="checkbox"/> By family of respondent	<input type="checkbox"/> By others
	<input type="checkbox"/> Rented	<input type="checkbox"/> By offended party and respondent	<input type="checkbox"/> By offended party	<input type="checkbox"/> By respondent	<input type="checkbox"/> By family of offended party	<input type="checkbox"/> By family of respondent	<input type="checkbox"/> By others
Automobile (if any)	<input type="checkbox"/> Owned	<input type="checkbox"/> By offended party and respondent	<input type="checkbox"/> By offended party	<input type="checkbox"/> By respondent	<input type="checkbox"/> By family of offended party	<input type="checkbox"/> By family of respondent	<input type="checkbox"/> By others

Note: kindly check the boxes which are applicable.

Republic of the Philippines
_____ COURT
_____ Region
Branch _____
_____ ,

Petitioner (Offended Party),
- versus -
_____ ,

Civil Case No. _____
Violence Against Women
and Their Children
(RA No. 9262)

x- - - - -x

P E T I T I O N
WITH PRAYER FOR THE ISSUANCE
OF A TEMPORARY PROTECTION ORDER

- ① ① PETITIONER (Offended Party), ____ years old,
 for and in her own behalf,
 through undersigned counsel,

unto this Honorable Court, respectfully states and alleges:

THE PARTIES AND RELATIONSHIP

- ① ② The Petitioner is the
 wife of the respondent
 former wife of the respondent
 common-law wife of the respondent
 former common-law wife of the respondent
 person being dated by the respondent
 person formerly being dated by the respondent
 person having a sexual relationship with the respondent
 person formerly having a sexual relationship with the respondent
 (specify other relationship): _____ .

- ① ③ Petitioner currently resides at _____ .
 Disclosure of the address will pose danger to the life of the petitioner. She attests that she is residing in the municipality or city over which the court has territorial jurisdiction.

(Note: If the petitioner is staying at a DSWD or NGO shelter, do not give address of the shelter but give the address as of the date of the incident of violence against women and children being complained of.)

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

04 Respondent, who is about ____ years old, may be found at _____
_____ .

05 Parties may be served with summonses and other court processes of the Honorable Court at their indicated addresses.

ANTECEDENT FACTS WHICH LED TO THE FILING OF THE PETITION

06 The **most recent event** that caused the petitioner to fear immediate and imminent danger of violence against women and their children is:

Date: _____ (Month) _____ (Day), 20 _____ (Year)

Threatening verbal statements uttered:

Describe injuries sustained:

Describe weapons used or threatened to be used:

*(Use additional page if necessary; indicate at the top of page Item **06**, Petition with Prayer for TPO)*

07 Respondent has a history of violent behavior such as:

08 Petitioner has neither property nor income with which to support herself and the minor children, to pay attorney's fees and the expenses incurred in bringing the above-entitled action. Petitioner is, therefore, requesting the court to appoint counsel to assist her.

09 Respondent is capable of providing support for petitioner and the minor children, paying attorney's fees and the expenses incurred in bringing the above-entitled action.

FOUNDATIONS FOR THE ISSUANCE
OF A TEMPORARY PROTECTION ORDER

10 The aforesaid acts of violence have caused the petitioner great physical and mental pain, suffering and anguish and have seriously impaired her physical and mental health and development.

11 Unless protected by this Honorable Court, there is reasonable ground to believe that the respondent will inflict further violence against petitioner, and that, for her protection, a temporary protection order is, therefore, necessary to prevent the occurrence or recurrence of such violence.

1 2 Unless protected by this Honorable Court, there is reasonable ground to believe that the respondent will likewise inflict violence against the family or household members of the petitioner, and, for their protection, they consent to a temporary protection order that the Honorable Court may issue to prevent the occurrence or recurrence of such violence.

1 3 Unless restrained by this Honorable Court, there is a great and imminent danger that respondent will take the minor children out of the jurisdiction of the Honorable Court and hide them in another place where petitioner will not be able to find them.

1 4 Petitioner has not applied for a temporary protection order with any other court.

PRAYER

In view of all the foregoing, petitioner prays that:

(1) Upon the filing of this petition, the Honorable Court issue *ex parte* in favor of the offended party a Temporary Protection Order:

Enjoining the respondent from threatening to commit or committing further acts of violence against the offended party and designated family and household member(s):

<i>Name</i>	<i>Age</i>	<i>Relationship</i>

(Use additional page if necessary; indicate at the top of page "Prayer-Protected Designated Family and Household Members," Petition with Prayer for TPO.)

- Ordering the respondent to stay away at a distance of _____ meters from:
 - petitioner
 - the offended party
 - designated family and household members
 - the residence of the offended party
 - the school of the petitioner
 - the place of employment of the petitioner
 - the _____ (*specify*) frequented by petitioner
 - the _____ (*specify*) frequented by designated family and household member;
- Granting the exclusive possession of the residence to the petitioner;
- Ordering the respondent to pay the petitioner's rent at a residence other than the one previously shared as respondent has a duty to support petitioner;
- Granting to the petitioner custody and charge of the minor children, until further orders from this Court;

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

- Ordering the respondent to absolutely desist and refrain from imposing any restraint on the personal liberty of petitioner and from taking from petitioner's custody or charge any of said minor children;
- Ordering the respondent from further communicating in any form, *e.g., landline telephone, mobile telephone, fax machine, e-mail and other means*, with the petitioner and her minor children in the residence respondent was ordered to vacate from; in the school where petitioner's minor children are studying; in the place of employment of petitioner; and in the (*specify*) _____ frequented by petitioner; and
- Ordering a law enforcement officer or barangay official to accompany either party to the residence to supervise the removal of personal belongings in order to ensure the personal safety of the petitioner.

(2) After hearing, judgment be rendered in petitioner's favor by making permanent the Temporary Protection Order prayed for.

Other reliefs just and equitable in the premises are prayed for.

_____ , _____ .

(Petitioner)

VERIFICATION AND CERTIFICATE
OF NON-FORUM SHOPPING

I, _____, Filipino, of legal age, and residing at _____
_____, after having been duly sworn in accordance with law, depose and state that:

- 1. I am the petitioner in the above-entitled case;
- 2. I filled up the foregoing petition with the assistance of the Clerk of Court. I have read and understood the allegations therein and the same are true and correct of my own knowledge and based on authentic records;
- 3. I certify and attest that:
 - a) I have not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein;
 - b) If there is such other pending action or claim, I will furnish this Honorable Court with a complete statement of the present status thereof; and
 - c) If I should thereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five days therefrom to this Honorable Court wherein my aforesaid petition has been filed.

Affiant further sayeth naught.

(date)

Affiant

SUBSCRIBED AND SWORN TO before me, this ____ day of _____, 20 ____, at _____
_____.

Administering Officer

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

REPUBLIC OF THE PHILIPPINES)

_____) S.S.
_____)

AFFIDAVIT OF INDIGENCY

I, _____, Filipino, of legal age, and residing at _____
_____, after having been duly sworn in accordance with law, depose and state that:

1. I am the petitioner in the above-entitled petition;
2. I filled up the foregoing petition with the assistance of the Clerk of Court;
3. Pursuant to Section 21, Rule 3, 1997 Rules of Civil Procedure, I am attesting to the fact that I am not in a financial position to pay the entire docket and other lawful fees, as I do not have money or property sufficient and available for food, shelter and basic necessities for myself and my children.

Affiant further sayeth naught.

Affiant

SUBSCRIBED AND SWORN TO before me, this ____ day of _____, 20 ____, at _____
_____.

Administering Officer

Republic of the Philippines
_____ COURT
_____ Region
Branch _____
_____, _____

_____,
Petitioner (Representative),
- versus -
_____,
Respondent.

Civil Case No. _____
Violence Against Women
and Their Children
(RA No. 9262)

x ----- x

P E T I T I O N

WITH PRAYER FOR THE ISSUANCE OF A TEMPORARY PROTECTION ORDER

0 1 PETITIONER,

- for and on behalf of the offended party
- through undersigned counsel,

unto this Honorable Court, respectfully states and alleges:

THE PARTIES AND RELATIONSHIP

0 2 The **OFFENDED PARTY** is (name) _____ , and is the:

- wife of the respondent
- former wife of the respondent
- common-law wife of the respondent
- former common-law wife of the respondent
- person being dated by the respondent
- person formerly being dated by the respondent
- person having a sexual relationship with the respondent
- person formerly having a sexual relationship with the respondent
- common child of mother and respondent
- child by nature of mother
- (specify other relationship): _____ .

0 3 The offended party currently resides at _____ .

Disclosure of the address will pose danger to the life of the offended party. The representative attests that the offended party is residing in the municipality or city over which the court has territorial jurisdiction.

(Note: If the OFFENDED PARTY is staying at a DSWD or NGO shelter, do not give address of the shelter but give the address as of the date of the incident of violence against women and children being complained of.)

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

- ④ The representative(s) is / are:
- Parent(s) of the offended party
 - Guardian of the offended party
 - Ascendant, descendant or relative of the offended party within the fourth civil degree of consanguinity or affinity
 - Officer or social worker of Department of Social Welfare and Development (DSWD)
 - Local Government Unit (LGU)
 - Police officer
 - In-charge of women and children's desks
 - Other police assignment
 - Punong barangay* of the *barangay* where the act of violence against women and their children occurred
 - At least two concerned, responsible citizens of the place where the act of violence against women and their children occurred
 - Lawyer of the offended party
 - Counselor of the offended party
 - Therapist of the offended party
 - Healthcare provider of the offended party

⑤ The representative(s) may be contacted at _____.

⑥ Respondent, who is about ____ years old, may be found at _____
_____.

⑦ Parties may be served with summonses and other court processes of the Honorable Court at their indicated addresses.

ANTECEDENT FACTS WHICH LED TO THE FILING OF THE PETITION

⑧ The **most recent event** that caused the offended party to fear immediate and imminent danger of violence against women and their children is:

Date: _____ (Month) ____ (Day), 20 ____ (Year)

Threatening verbal statements uttered: _____
_____.

Describe injuries sustained: _____

_____.

Describe weapons used or threatened to be used: _____

(Use additional page if necessary; indicate at the top of page Item <“Petition with Prayer for TPO.)

09 Respondent has a history of violent behavior such as: _____

- 10 The offended party a minor child has neither property nor income with which to support
 - herself and the minor children,
 - himself herself and his her
 - mother guardian *ad litem*,

to pay attorney’s fees and the expenses incurred in bringing the above-entitled action. Petitioner is, therefore, requesting the court to appoint counsel to assist him / her in prosecuting the case on behalf of the offended party.

- 11 Respondent is capable of providing support for
 - the offended party and the minor children,
 - the offended party minor child and
 - his her
 - mother guardian *ad litem*

paying attorney’s fees and the expenses incurred in bringing the above-entitled action.

GROUND FOR THE ISSUANCE OF A TEMPORARY PROTECTION ORDER

12 The aforesaid acts of violence have caused the offended party great physical and mental pain, suffering and anguish and have seriously impaired her / his physical and mental health and development.

13 Unless protected by this Honorable Court, there is reasonable ground to believe that the respondent will inflict further violence against the offended party, and that, for her / his protection, a temporary protection order is, therefore, necessary to prevent the occurrence or recurrence of such violence.

14 Unless protected by this Honorable Court, there is reasonable ground to believe that the respondent will likewise inflict violence against the family or household members of the offended party, and, for their protection, they consent to a temporary protection order that the Honorable Court may issue to prevent the occurrence or recurrence of such violence.

15 Unless restrained by this Honorable Court, there is a great and imminent danger that respondent will take the minor children out of the jurisdiction of the Honorable Court and hide them in another place where the offended party will not be able to find them.

PRAYER

In view of all the foregoing, petitioner prays that:

(1) Upon the filing of this petition, the Honorable Court issue *ex parte* in favor of the offended party a Temporary Protection Order:

- Enjoining the respondent from threatening to commit or committing further acts of violence against the offended party and designated family and household member(s):

<i>Name</i>	<i>Age</i>	<i>Relationship</i>

(Use additional page if necessary; indicate at the top of page "Prayer-Protected Designated Family and Household Members," Petition with Prayer for TPO)

- Ordering the respondent to stay away at a distance of meters from:
 - the offended party
 - designated family and household members
 - the residence of the offended party
 - the school of the offended party
 - the place of employment of the offended party
 - the _____ (*specify*) frequented by the offended party
 - the _____ (*specify*) frequented by designated family and household member;
 - Granting the exclusive possession of the residence to the offended party;
 - Ordering the respondent to pay the offended party's rent at a residence other than the one previously shared as respondent has a duty to support her/ him;
 - Granting to the offended party custody and charge of the minor children, until further orders from this Court;
 - Ordering the respondent to absolutely desist and refrain from imposing any restraint on the personal liberty of the offended party and from taking from her custody or charge any of said minor children;
 - Ordering the respondent from further communicating in any form, e.g., *landline telephone, mobile telephone, fax machine, e-mail and other means*, with the offended party and her minor children in the residence respondent was ordered to vacate from; in the school where offended party's minor children are studying; in the place of her employment; and in the (*specify*) _____ she frequents; and
 - Ordering a law enforcement officer or barangay official to accompany either party to the residence to supervise the removal of personal belongings in order to ensure the personal safety of the offended party.
- (2) After hearing, judgment be rendered in the offended party's favor by making permanent the Temporary Protection Order prayed for.

Other reliefs just and equitable in the premises are prayed for.

_____ , _____ .

(Petitioner)

VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING

I, _____, Filipino, of legal age, and residing at _____, after having been duly sworn in accordance with law, depose and state that:

- 1. I am the representative of the offended party in the above-entitled case;
- 2. I filled up the foregoing petition with the assistance of the Clerk of Court. I have read and understood the allegations therein and the same are true and correct of my own knowledge and based on authentic records;
- 3. I certify and attest that:
 - a) I have not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein;
 - b) If there is such other pending action or claim, I will furnish this Honorable Court with a complete statement of the present status thereof; and
 - c) If I should thereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five days therefrom to this Honorable Court wherein my aforesaid petition has been filed.

Affiant further sayeth naught.

(date)

Affiant

SUBSCRIBED AND SWORN TO before me, this ____ day of _____, 20____, at _____.

Administering Officer

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

REPUBLIC OF THE PHILIPPINES)

_____) S.S.
_____)
_____)

AFFIDAVIT OF INDIGENCY

I, _____, Filipino, of legal age, and residing at _____
_____, after having been duly sworn in accordance with law, depose and state that:

1. I am the representative of the offended party in the above-entitled petition;
2. I filled up the foregoing petition with the assistance of the Clerk of Court;
3. Pursuant to Section 21, Rule 3, 1997 Rules of Civil Procedure, I am attesting to the fact that
 the offended party

the offended party – minor child

is not in a financial position to pay the entire docket and other lawful fees, as

the offended party does not have

the offended party – minor child does not have

money or property sufficient and available for food, shelter and basic necessities for

herself and her children

himself herself and

his her

mother guardian *ad litem*.

Affiant further sayeth naught.

Affiant

SUBSCRIBED AND SWORN TO before me, this _____ day of _____, 20____, at _____
_____ .

Administering Officer

ADMINISTRATIVE MATTER No. 03-03-13-SC
RULE ON ADMINISTRATIVE PROCEDURE IN SEXUAL HARASSMENT CASES
AND GUIDELINES ON PROPER WORK DECORUM IN THE JUDICIARY
Effective January 3, 2005

SECTION 1. Coverage. – This Rule shall apply to all officials and employees of the Judiciary including those in the Presidential Electoral Tribunal, the Office of the Court Administrator and the Philippine Judicial Academy. It shall not, however, apply to the members of the Supreme Court, who can only be removed by impeachment under the Constitution, and the members of the Judicial and Bar Council.

SEC. 2. Objectives. – The objectives of this Rule are: to promote full respect for human rights; to uphold the dignity of every individual, especially employees and applicants for employment in the Judiciary; and to enhance the development of the human resources of the State by promoting their right to a humane, just and safe work environment and improving their morale and efficiency in the workplace.

SEC. 3. Work-related Sexual Harassment; Definition. – Work-related sexual harassment is committed by an official or employee in the Judiciary who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the latter.

SEC. 4. Work-related Sexual Harassment; How Committed. – Work-related sexual harassment is committed when:

(a) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee. It shall include, but shall not be limited to, the following modes:

1. Physical, such as malicious touching, overt sexual advances, and gestures with lewd insinuation.
2. Verbal, such as requests or demands for sexual favors, and lurid remarks.
3. Use of objects, pictures or graphics, letters or written notes with sexual underpinnings.
4. Other acts analogous to the foregoing.

(b) The above acts would impair the employee's rights or privileges under existing laws; or

(c) The above acts would result in an intimidating, hostile or offensive environment for the employee.

SEC. 5. Persons Liable. – Any person who (a) directly commits sexual harassment; (b) induces or directs another person to commit such harassment; or (c) cooperates through an act without which sexual harassment would not have been accomplished shall be administratively liable for sexual harassment.

SEC. 6. Creation of the Committee on Decorum and Investigation (CODI). – The Chief Justice shall appoint the members of the Supreme Court Committee on Decorum and Investigation (SC-CODI), while the Presiding Justices of the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals shall appoint the members of their respective CODIs. In the Court of Appeals Divisions in Cebu City and Cagayan de Oro City, the Executive Justices shall appoint the members of their respective CODIs. In the lower courts, the Executive Judges shall appoint the members of their CODIs.

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

The SC-CODI shall have jurisdiction over work-related sexual harassment cases committed by the officials and employees of the Supreme Court proper, the Presidential Electoral Tribunal, the Office of the Court Administrator, the Philippine Judicial Academy and the employees of the Judicial and Bar Council.

SEC. 7. Committee on Decorum and Investigation-Composition, Voting and Term of Office. – The SC-CODI shall be composed of the Clerk of Court as Chairperson; a representative from the Office of the Court Administrator as Vice-Chairperson; and a representative each from the Office of the Chief Attorney, the Office of Administrative Services, the Medical and Dental Services, the Supreme Court Assembly of Lawyer- Employees, Inc. (SCALE), and the Supreme Court Employees Association (SCEA). The representatives of the SCALE and the SCEA shall be designated by their respective governing boards from among officials or members in good standing.

The CODIs of the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals shall be composed of the Presiding Justice as Chairperson; the Clerk of Court as Vice-Chairperson; and one representative each from the employees' associations duly accredited by the Office of the Court Administrator.

The CODIs of the Court of Appeals Divisions in Cebu City and Cagayan de Oro City shall be composed of the Executive Justice as Chairperson; the Clerk of Court as Vice Chairperson; and one representative each from the employees' associations duly accredited by the Office of the Court Administrator.

In multi-sala lower courts, the CODIs shall be composed of the Executive Judge as Chairperson; the Clerk of Court as Vice-Chairperson; and one representative each from the employees' associations duly accredited by the Office of the Court Administrator. In the case of single sala lower courts, the Office of the Court Administrator shall cluster them for the purpose of forming their respective CODIs.

A majority of the members of the CODI shall constitute a quorum. A vote of a majority of the CODI members present, there being a quorum, shall be necessary for the issuance of a recommendation. No CODI member shall participate in any proceeding where he or she is either a complainant or a respondent, or is related by consanguinity or affinity within the third civil degree to the complainant or the respondent.

In case the Chairperson is disqualified or inhibits himself, the Assistant Clerk of Court in the Supreme Court, the most senior Associate Justice in the Court of Appeals, the Sandiganbayan and Court of Tax Appeals, or the Vice-Executive Judge in the lower courts shall serve as the Acting Chairperson of the CODIs in their respective courts.

The members of the CODI shall serve for a term of two years from their date of appointment.

SEC. 8. Jurisdiction, Powers and Responsibilities of the CODIs. – The CODIs shall have Jurisdiction over all complaints for sexual harassment committed by officials and employees of the Judiciary. They shall:

- (a) Receive the complaint, investigate its allegations, and submit a report and recommendation to the proper court or authority, as provided for in Section 18 of this Rule;
- (b) Conduct meetings at least once a year with the representatives of the different offices for the purpose of recommending to the appropriate body measures that shall increase and promote understanding and prevent incidents of sexual harassment; and
- (c) Perform such other functions as may be necessary and incidental to the achievement of the objectives of RA No. 7877.¹

SEC. 9. Complaint. – A complaint for sexual harassment shall be in writing, under oath, and accompanied by a certificate of non-forum-shopping. It shall be supported by the affidavits of witnesses, if any, and other evidence of the complainant. It shall be filed with the Office of the Clerk of Court in which the respondent is an official or employee. A docket number shall be assigned to each complaint filed.

1. Anti-Sexual Harassment Act of 1995.

SEC. 10. Action on the Complaint. – If the Committee finds the complaint sufficient in form and substance, a copy thereof shall be served upon the respondent who shall be required to submit an answer under oath and supported by the affidavits of his witnesses and other evidence and furnish a copy thereof to the complainant, within five working days from date of service. The complainant may file a reply within five working days from receipt of the answer.

If the complaint is insufficient in form or substance, the CODI shall recommend its dismissal. The dismissal is without prejudice to the filing of administrative, civil or criminal charges against the complainant and the assisting counsel, if any, if the complaint is manifestly frivolous and filed only for purposes of harassment.

SEC. 11. Withdrawal of Complaint. – The complainant will not be allowed to withdraw the complaint if such withdrawal would prejudice the interest of the service and its ethical standards.

SEC. 12. Failure to File Answer. – In case no answer is filed without any justifiable cause, the respondent shall be deemed to have waived the right to present evidence. The respondent may, however, be allowed to attend the hearings and cross-examine adverse witnesses.

SEC. 13. Pre-hearing Conference. – Upon receipt of the answer, the CODI shall call the parties to a pre-hearing conference to consider the following:

- (a) stipulation of facts;
- (b) simplification of issues;
- (c) identification and marking of evidence;
- (d) waiver of objections to admissibility of evidence;
- (e) limitation of the number of witnesses;
- (f) dates of subsequent hearings; and
- (g) such other matters as may aid in the prompt and just disposition of the complaint.

The parties may file position papers and thereafter submit the case for disposition based on the result of the pre-hearing conference without any need for further hearing.

SEC. 14. Formal Hearing. – The formal hearing shall be conducted by not less than the majority of the members of the CODI present.

The CODI may order the exclusion from the hearing room of all persons who do not have a direct interest in the case. The order may be made if the CODI determines on the record that requiring a party or any witness to testify in open court would not enhance the ascertainment of truth; would cause the party or witness psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the right of a party to privacy; or would be offensive to decency or public morals.

No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court.

SEC. 15. Preventive Suspension. – Upon motion of the complainant, or *motu proprio*, the CODI may recommend to the proper court or authority the preventive suspension of the respondent for a period of 30 days. It may also recommend its extension.

An order of preventive suspension may be issued to temporarily remove the respondent from the scene of the misfeasance or malfeasance and to preclude the possibility of respondent's exerting undue influence or pressure on the witnesses or tampering of documentary evidence on file.

LAWS, RULES AND ISSUANCES FOR CASES INVOLVING FAMILY, DOMESTIC RELATIONS, WOMEN AND CHILDREN

SEC. 16. *Remedy of Party from the Order of Preventive Suspension or its Denial.* – The aggrieved party may file a motion for reconsideration with the proper court or authority within 15 days from receipt of the order of preventive suspension or its denial.

SEC. 17. *Penalty.* – In recommending the penalty to be imposed, the CODIs shall consider the totality of the circumstances, including the following factors:

- (a) nature or character of the act;
- (b) frequency of occurrence of the act;
- (c) abuse of authority;
- (d) degree of moral influence or ascendancy;
- (e) concealment of the act;
- (f) effect on the victim; and
- (g) other analogous factors.

SEC. 18. *Report and Recommendation.* – Within 20 working days from the termination of the hearing, the CODI shall submit to the proper court or authority its report and recommendation with the complete record of the case. In the Supreme Court, a Division of the Court shall decide the case; however, where the recommended penalty is dismissal from the service, suspension for more than one year, or fine of more than Twenty Thousand Pesos (P20,000), the Court *en banc* shall decide the case.

In the Court of Appeals, Sandiganbayan and Court of Tax Appeals, a Division shall decide the case within 60 days from the date of filing of the last pleading, brief, or memorandum required by the court, regardless of the recommended penalty, subject to review by the Supreme Court, in accordance with the preceding paragraph.

In the lower courts, the Office of the Court Administrator shall decide the case within 60 days from the date of filing of the last pleading, brief, or memorandum required by it, regardless of the recommended penalty, subject to review by the Supreme Court, in accordance with the first paragraph herein.

SEC. 19. *Effect of Proceeding on Civil and Criminal Liabilities.* – The proceedings taken under this Rule on the imposition of the appropriate penalty shall not interrupt or bar any civil or criminal action which the complainant has filed or may file against the respondent.

SEC. 20. *Guidelines on Proper Work Decorum.* – Members, officials and employees of the Judiciary shall be guided on the matter of decorum by (a) the Code of Conduct and Ethical Standards for Public Officials and Employees; (b) the New Code of Judicial Conduct for the Philippine Judiciary; (c) the Code of Professional Responsibility; (d) the Code of Conduct for Court Personnel; and (e) other related issuances of the Court.

SEC. 21. *Transitory Provision.* – All administrative cases of sexual harassment against officials and employees of the Judiciary filed after the effectivity of this Rule shall be investigated by the newly-constituted CODIs. Cases already filed before the effectivity of this Rule but not yet heard shall be forwarded to the proper CODIs. Those already filed and undergoing hearings before the effectivity of this Rule shall continue to be heard, and shall thereafter be decided by the court where the case has been filed and heard.

SEC. 22. *Effectivity.* – This Rule shall take effect on January 3, 2005 following its publication in a newspaper of general circulation not later than December 20, 2004.

ADMINISTRATIVE MATTER No. 06-11-5-SC
RULE ON DNA EVIDENCE
Effective October 15, 2007

SECTION. 1. Scope. – This Rule shall apply whenever DNA evidence, as defined in Section 3 hereof, is offered, used, or proposed to be offered or used as evidence in all criminal and civil actions as well as special proceedings.

SEC. 2. Application of Other Rules on Evidence. – In all matters not specifically covered by this Rule, the Rules of Court and other pertinent provisions of law on evidence shall apply.

SEC. 3. Definition of Terms. – For purposes of this Rule, the following terms shall be defined as follows:

- (a) *Biological sample* means any organic material originating from a person's body, even if found in inanimate objects, that is susceptible to DNA testing. This includes blood, saliva and other body fluids, tissues, hairs and bones;
- (b) *DNA* means deoxyribonucleic acid, which is the chain of molecules found in every nucleated cell of the body. The totality of an individual's DNA is unique for the individual, except identical twins;
- (c) *DNA evidence* constitutes the totality of the DNA profiles, results and other genetic information directly generated from DNA testing of biological samples;
- (d) *DNA profile* means genetic information derived from DNA testing of a biological sample obtained from a person, which biological sample is clearly identifiable as originating from that person;
- (e) *DNA testing* means verified and credible scientific methods which include the extraction of DNA from biological samples, the generation of DNA profiles and the comparison of the information obtained from the DNA testing of biological samples for the purpose of determining, with reasonable certainty, whether or not the DNA obtained from two or more distinct biological samples originates from the same person (direct identification) or if the biological samples originate from related persons (kinship analysis); and
- (f) *Probability of Parentage* means the numerical estimate for the likelihood of parentage of a putative parent compared with the probability of a random match of two unrelated individuals in a given population.

SEC. 4. Application for DNA Testing Order. – The appropriate court may, at any time, either *motu proprio* or on application of any person who has a legal interest in the matter in litigation, order a DNA testing. Such order shall issue after due hearing and notice to the parties upon a showing of the following:

- (a) A biological sample exists that is relevant to the case;
- (b) The biological sample: (i) was not previously subjected to the type of DNA testing now requested; or (ii) was previously subjected to DNA testing, but the results may require confirmation for good reasons;
- (c) The DNA testing uses a scientifically valid technique;
- (d) The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and
- (e) The existence of other factors, if any, which the court may consider as potentially affecting the accuracy or integrity of the DNA testing.

This Rule shall not preclude a DNA testing, without need of a prior court order, at the behest of any party, including law enforcement agencies, before a suit or proceeding is commenced.

SEC. 5. DNA Testing Order. – If the court finds that the requirements in Section 4 hereof have been complied with, the court shall:

- (a) Order, where appropriate, that biological samples be taken from any person or crime scene evidence;
- (b) Impose reasonable conditions on DNA testing designed to protect the integrity of the biological sample, the testing process and the reliability of the test results, including the condition that the DNA test results shall be simultaneously disclosed to parties involved in the case; and

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- (c) If the biological sample taken is of such an amount that prevents the conduct of confirmatory testing by the other or the adverse party and where additional biological samples of the same kind can no longer be obtained, issue an order requiring all parties to the case or proceedings to witness the DNA testing to be conducted.

An order granting the DNA testing shall be immediately executory and shall not be appealable. Any petition for *certiorari* initiated therefrom shall not, in any way, stay the implementation thereof, unless a higher court issues an injunctive order. The grant of a DNA testing application shall not be construed as an automatic admission into evidence of any component of the DNA evidence that may be obtained as a result thereof.

SEC. 6. *Post-conviction DNA Testing.* – Post-conviction DNA testing may be available, without need of prior court order, to the prosecution or any person convicted by final and executory judgment provided that (a) a biological sample exists, (b) such sample is relevant to the case, and (c) the testing would probably result in the reversal or modification of the judgment of conviction.

SEC. 7. *Assessment of Probative Value of DNA evidence.* – In assessing the probative value of the DNA evidence presented, the court shall consider the following:

- (a) The chain of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;
- (b) The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;
- (c) The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and
- (d) The reliability of the testing result, as hereinafter provided.

The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily.

SEC. 8. *Reliability of DNA Testing Methodology.* – In evaluating whether the DNA testing methodology is reliable, the court shall consider the following:

- (a) The falsifiability of the principles or methods used, that is, whether the theory or technique can be and has been tested;
- (b) The subjection to peer review and publication of the principles or methods;
- (c) The general acceptance of the principles or methods by the relevant scientific community;
- (d) The existence and maintenance of standards and controls to ensure the correctness of data generated;
- (e) The existence of an appropriate reference population database; and
- (f) The general degree of confidence attributed to mathematical calculations used in comparing DNA profiles and the significance and limitation of statistical calculations used in comparing DNA profiles.

SEC. 9. *Evaluation of DNA Testing Results.* – In evaluating the results of DNA testing, the court shall consider the following:

- (a) The evaluation of the weight of matching DNA evidence or the relevance of mismatching DNA evidence;
- (b) The results of the DNA testing in the light of the totality of the other evidence presented in the case; and that
- (c) DNA results that exclude the putative parent from paternity shall be conclusive proof of non-paternity. If the value of the Probability of Paternity is less than 99.9 percent, the results of the DNA testing shall be considered as corroborative evidence. If the value of the Probability of Paternity is 99.9 percent or higher, there shall be a disputable presumption of paternity.

SEC. 10. Post-conviction DNA Testing. Remedy if the Results are Favorable to the Convict. – The convict or the prosecution may file a petition for a writ of *habeas corpus* in the court of origin if the results of the post-conviction DNA testing are favorable to the convict. In case the court, after due hearing, finds the petition to be meritorious, it shall reverse or modify the judgment of conviction and order the release of the convict, unless continued detention is justified for a lawful cause.

A similar petition may be filed either in the Court of Appeals or the Supreme Court, or with any member of said courts, which may conduct a hearing thereon or remand the petition to the court of origin and issue the appropriate orders.

SEC. 11. Confidentiality. – DNA profiles and all results or other information obtained from DNA testing shall be confidential. Except upon order of the court, a DNA profile and all results or other information obtained from DNA testing shall only be released to any of the following, under such terms and conditions as may be set forth by the court:

- (a) Person from whom the sample was taken;
- (b) Lawyers representing parties in the case or action where the DNA evidence is offered and presented or sought to be offered and presented;
- (c) Lawyers of private complainants in a criminal action;
- (d) Duly authorized law enforcement agencies; and
- (e) Other persons as determined by the court.

Whoever discloses, utilizes or publishes in any form any information concerning a DNA profile without the proper court order shall be liable for indirect contempt of the court wherein such DNA evidence was offered, presented or sought to be offered and presented.

Where the person from whom the biological sample was taken files a written verified request to the court that allowed the DNA testing for the disclosure of the DNA profile of the person and all results or other information obtained from the DNA testing, the same may be disclosed to the persons named in the written verified request.

SEC. 12. Preservation of DNA Evidence. – The trial court shall preserve the DNA evidence in its totality, including all biological samples, DNA profiles and results or other genetic information obtained from DNA testing. For this purpose, the court may order the appropriate government agency to preserve the DNA evidence as follows:

- (a) In criminal cases:
 - i. for not less than the period of time that any person is under trial for an offense; or,
 - ii. in case the accused is serving sentence, until such time as the accused has served his sentence;
 and
- (b) In all other cases, until such time as the decision in the case where the DNA evidence was introduced has become final and executory.

The court may allow the physical destruction of a biological sample before the expiration of the periods set forth above, provided that:

- (a) A court order to that effect has been secured; or
- (b) The person from whom the DNA sample was obtained has consented in writing to the disposal of the DNA evidence.

SEC. 13. Applicability to Pending Cases. – Except as provided in Sections 6 and 10 hereof, this Rule shall apply to cases pending at the time of its effectivity.

SEC. 14. Effectivity. – This Rule shall take effect on October 15, 2007, following publication in a newspaper of general circulation.

ADMINISTRATIVE MATTER No. 07-8-2-SC
RULE ON CHILDREN CHARGED UNDER REPUBLIC ACT No. 9165
OR THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002

Effective November 5, 2007

SECTION 1. *Applicability.* – This Rule, together with the pertinent provisions of the Rule on Juveniles in Conflict with the Law, the Rule on the Examination of a Child Witness, and Republic Act No. 9344 or The Juvenile Justice and Welfare Act of 2006, applies to all cases involving children charged under Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Rules of Court shall apply suppletorily.

SEC 2. *Objectives.* – It is the policy of the State to safeguard the integrity of its territory and the well-being of its citizenry, particularly children, from the harmful effects of dangerous drugs on their physical and mental well-being and to defend them against acts or omissions detrimental to their development and preservation.

Pursuant to this policy and the mandate of Republic Act No. 8369, also known as The Family Courts Act of 1997, vesting exclusive jurisdiction in Family Courts to hear and decide cases against minors charged with drug-related offenses, the objective of this Rule is to ensure that the rights of children charged with violation of any of the offenses under The Comprehensive Dangerous Drugs Act of 2002 are well protected, and that their interests and those of their family and the community are adequately balanced. Towards this end, the Rule aims to:

- (a) Provide a rule of procedure in the Family Courts or the Regional Trial Courts, as the case may be, for children charged with any of the acts penalized under The Comprehensive Dangerous Drugs Act of 2002, taking into consideration their developmental age and potential to recover from dependence on drugs and to stop substance abuse, so that they can live productive, substance-free and crime-free lives;
- (b) Ensure a more active and continuous judicial supervision and monitoring of the compliance by and progress of the child and family members in the treatment programs and rehabilitation services provided; and
- (c) Establish greater coordination among the courts, the treatment community and other community-based support agencies, the faith community, the school system and the family in responding to the needs of the child under a holistic intervention and integration policy focused on changing problem behavior rather than merely punishing criminal conduct.

SEC. 3. *Interpretation.* – This Rule shall be construed and interpreted liberally in favor of the child in conflict with the law, consistent with the best interest of the child, the declared state policy, the rights of the child in conflict with the law and the principle of balanced and restorative justice.

SEC. 4. *Definitions.* – As used in this Rule:

- (a) *Act* – means Republic Act No. 9165 or The Comprehensive Dangerous Drugs Act of 2002.
- (b) *Administer* – means any act of introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion or other means, or of committing any act of indispensable assistance to a person in administering a dangerous drug to himself/herself, unless administered by a duly licensed practitioner for purposes of medication.
- (c) *Board* – refers to the Dangerous Drugs Board under Section 77, Article IX of Republic Act No. 9165.
- (d) *Center* – means any of the treatment and rehabilitation centers for drug dependents referred to in Section 75, Article VIII of Republic Act No. 9165.
- (e) *Child* – refers to any person above 15 years of age but below 18 under Section 6 of Republic Act No. 9344.

- (f) *Confirmatory Test* – means an analytical test using a device, tool or equipment with a different chemical or physical principle that is more specific which will validate and confirm the result of the screening test.
- (g) *Controlled precursors and essential chemicals* – include those listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as enumerated in the annex attached to and made an integral part of Republic Act No. 9165.
- (h) *Dangerous drugs* – refer to those listed in the Schedules annexed to the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 United Nations Single Convention on Psychotropic Substances, attached as annexes to and made an integral part of Republic Act No. 9165.
- (i) *Deliver* – refers to any act of knowingly passing a dangerous drug or controlled precursor and essential chemical to another, personally or otherwise, and by any means, with or without consideration.
- (j) *Dispense* – means any act of giving away, selling or distributing medicine or any dangerous drug with or without the use of prescription.
- (k) *Drug Dependence* – as based on the World Health Organization definition means a cluster of physiological, behavioral and cognitive phenomena of variable intensity, in which the use of a psychoactive drug takes on a high priority, thereby involving, among others, a strong desire or a sense of compulsion to take the substance; and the difficulties in controlling substance-taking behavior in terms of its onset, termination, or level of use.
- (l) *Drug Syndicate* – means any organized group of two or more persons forming or joining together, with the intention of committing any offense prescribed under Republic Act No. 9165.
- (m) *Illegal Trafficking* – means the illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.
- (n) *Instrument* – means anything that is used in or intended to be used in any manner in the commission of illegal drug trafficking or related offenses.
- (o) *PDEA* – refers to the Philippine Drug Enforcement Agency.
- (p) *Pusher* – means any person who sells, trades, administers, dispenses, delivers or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports dangerous drugs or who acts as a broker in any of such transactions, in violation of Republic Act No. 9165.
- (q) *Rehabilitation* – refers to the dynamic process, including after-care and follow-up treatment, directed towards the physical, emotional/psychological, vocational, social and spiritual well-being, change or enhancement of a child drug dependent to enable him/her to live without dangerous drugs, enjoy the fullest life compatible with the child's capabilities and potentials and enable him/her to become a law-abiding and productive member of the community.
- (r) *Screening Test* – means a rapid drug test performed to establish potential/presumptive positive result.
- (s) *Sell* – means any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.
- (t) *Use* – means any act of injecting, intravenously or intramuscularly, of consuming, either by chewing, smoking, sniffing, eating, swallowing, drinking or otherwise introducing into the physiological system of the body, any of the dangerous drugs or controlled precursors and essential chemicals.

SEC. 5. Mandatory Drug Test. – A child charged before the prosecutor's office with a criminal offense not penalized by the Act, but with an imposable penalty of imprisonment of not less than six years and one day, shall be subjected to a mandatory drug test.

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SEC. 6. Screening Laboratory Test and Confirmatory Test. – A child taken into custody for alleged violation of the Act shall be subjected to a screening laboratory test within 24 hours from the time the child was taken into custody. The apprehending officer must have reasonable grounds to believe that the child, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If the result of the test is positive, it shall be challenged by the child personally or through his/her parents, guardian, custodian or any relative within the fourth degree of consanguinity or affinity, within 15 days after receipt thereof, through a confirmatory test conducted in any accredited analytical laboratory equipped with gas chromatograph/mass spectrometry equipment or some other modern accepted method. If confirmed, the same shall be *prima facie* evidence that the child has used dangerous drugs, which shall be without prejudice to prosecution for other violations of the Act.

A positive screening laboratory test must be confirmed for the positive finding to be valid in court.

SEC. 7. Intake Report. – An Intake Report shall be prepared by the social welfare officer assigned to the child, as soon as the child is taken into custody by the apprehending officer pursuant to Section 10 of the Rule on Juveniles in Conflict with the Law. The report shall describe the results of a preliminary background investigation of the child, and shall form part of the records of the case to aid the proper authorities in properly addressing the substance abuse problem of the child.

SEC. 8. Voluntary Submission of a Child Drug Dependent to Confinement, Treatment and Rehabilitation. – A child who is a drug dependent or suspected to be one may – personally or through the parent, guardian or relative within the fourth degree of consanguinity or affinity – apply with the Board or its duly recognized representative for treatment and rehabilitation of the drug dependency. The Board shall then submit the matter to the court, which shall immediately order that the child be examined for drug dependency.

SEC. 9. Case Study Report. – The court shall likewise direct the court social worker to prepare and submit to it a Case Study Report for its consideration pursuant to Section 19 of the Rule on Juveniles in Conflict with the Law. The case study report shall identify the child's environmental, family and psychosocial functioning problems, including a strengths-based biophysical assessment done on the child by a Department of Health (DOH)-accredited physician, to help the court in properly addressing the substance abuse problem of the child.

SEC. 10. Examination for Drug Dependency. – The examination for drug dependency shall be conducted by an accredited physician of the DOH. If the results show that the child is a drug dependent, the court shall order that the child undergo treatment and rehabilitation in a Center designated by the Board for a period of not less than six months.

SEC. 11. Treatment and Care by a DOH-Accredited Physician. – A child drug dependent may be placed under the care of a DOH-accredited physician if:

- (a) no Center is near or accessible to the residence of the child; or
- (b) where the child is a first-time offender and non-confinement in a Center will not pose a serious danger to his/her family or community.

SEC. 12. Treatment Program Design. – The court shall direct the Center or DOH-accredited physician to ensure that the treatment program designed for the child shall consider the following factors:

- (a) Family history of drug or substance abuse;
- (b) Personality characteristics such as low self-esteem, sensation-seeking attitude, lower intellectual achievement and aggressive behavior;
- (c) Gender-based violence;
- (d) Lack of family or relational attachments;
- (e) Peer pressure; or
- (f) School or education environment.

The court shall also direct that the intervention treatment program include the active participation and collaboration of the child's family, the law enforcers, the child's school, if any, various community organizations dealing with at-risk youths, and the court system itself.

SEC. 13. *Period of Confinement in a Center or Under the Care of DOH-Accredited Physician.* – Confinement in a Center for treatment and rehabilitation or under the care of a DOH-accredited physician shall not exceed one year, after which time the head of the Center or the said physician, as the case may be, shall apprise the court, as well as the Board, of the status of the treatment and rehabilitation of the child. The court, together with the Board, shall determine whether further confinement or care will be for the welfare and best interest of the child drug dependent and his/her family or the community.

SEC. 14. *Discharge Under the Voluntary Submission Program.* – A child drug dependent under the voluntary submission program who is finally discharged from confinement shall be exempt from criminal liability under Section 15 of this Act, subject to the following conditions:

- (a) He/she has complied with the rules and regulations of the Center or those imposed by the DOH-accredited physician, the applicable rules and regulations of the Board, including the after-care and follow-up program for at least 18 months following temporary discharge from confinement in the Center or, in the case of a child drug dependent placed under the care of the DOH-accredited physician, the after-care program and follow-up schedule formulated by the Department of Social Welfare and Development (DSWD) and approved by the Board;
- (b) He/she has never been charged with or convicted of any offense punishable under the Act, the Dangerous Drugs Act of 1972 or Republic Act No. 6425, as amended, the Revised Penal Code, as amended, or any other special penal law;
- (c) He/she has no record of escape from a Center or, if an escapee, has surrendered personally or through the parents, guardian or relative within the fourth degree of consanguinity or affinity, within one week from the date of the escape; and
- (d) He/she poses no serious danger to his/her person, family or community.

Should the child fail to comply with any of the above conditions, the case shall be referred to the prosecutor for regular preliminary investigation.

SEC. 15. *Temporary Release from the Center, After-Care and Follow-up Treatment Under the Voluntary Submission Program.* – Upon certification by the Center or the DOH-accredited physician that the child drug dependent under the voluntary submission program may be temporarily released, the court shall order such release on condition that the child shall report to the DOH for after-care and follow-up treatment, including urine testing, for a period not exceeding 18 months under such terms and conditions that the court may impose.

The DOH-accredited physician can recommend to the court the temporary release of the child drug dependent at least 45 days after initial admission to a facility and may likewise prescribe a comprehensive after-care and follow-up program approved by the court to which the child drug dependent should adhere in order to complete at least 18 months.

If at any time during the period of after-care and follow-up program, the child is certified to be rehabilitated, the court shall order his/her final discharge, subject to the provisions of Section 12 of this Rule, without prejudice to the outcome of any pending case filed in court.

SEC. 16. *Recommitment.* – Should the DOH find that during the initial after-care and follow-up program of 18 months, the child drug dependent requires further treatment and rehabilitation in the Center or by the DOH-accredited physician, he/she shall be so recommitted. Thereafter, he/she may again be certified for temporary release and ordered released for another after-care and follow-up program pursuant to Section 13 of this Rule.

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SEC. 17. Probation and Community Service Under the Voluntary Submission Program. – A child drug dependent under the voluntary submission program who is discharged as rehabilitated by the Center or DOH-accredited physician, but does not qualify for exemption from criminal liability under Section 55 of the Act, may be charged under the provisions of the Act. However, the court upon its discretion may order that the child be placed on probation and that he/she undergo community service in lieu of imprisonment and/or fine, without prejudice to the outcome of any pending case filed in court.

The child drug dependent shall undergo community service as part of his/her after-care and follow-up program which may be done in coordination with non-governmental civic organizations accredited by the DSWD, with the recommendation of the Board.

Both the after-care and follow-up programs shall employ a strengths-based approach which shall focus on reinforcing the positive internal resources of the child, such as his/her innate talents or skills, what he/she is good at, as well as what his/her life goals are and what may be done to achieve them.

SEC. 18. Filing of Charges Against a Child Drug Dependent Who is not Rehabilitated Under the Voluntary Submission Program. – A child drug dependent under the voluntary submission program who is not rehabilitated after a second commitment to the Center or a DOH-accredited physician under the voluntary submission program shall be charged and prosecuted, upon recommendation of the Board, with violation of Section 15 of the Act. If convicted, the child shall be credited for the period of confinement and rehabilitation in the Center or by the DOH-accredited physician, in the service of the sentence. In addition thereto, the child shall enjoy all the rights provided under the Rule on Juveniles in Conflict with the Law that are not inconsistent with the provisions of the Act.

SEC. 19. Escape and Recommitment for Confinement and Rehabilitation Under the Voluntary Submission Program. – A child drug dependent under the voluntary submission program who escapes from the Center or from the custody and care of a DOH-accredited physician may submit himself/herself for recommitment and rehabilitation within one week from such escape. The parent, guardian or relative within the fourth degree of consanguinity or affinity may, within this period, also surrender the child for recommitment and rehabilitation in which case the corresponding order shall be issued by the Board.

If the child fails to submit himself/herself or is not surrendered for recommitment or rehabilitation after one week from his/her escape, the Board shall apply to the court for a recommitment and rehabilitation order. Upon proof of previous commitment or voluntary submission of the child to the Board, the court shall issue an order for recommitment and rehabilitation within one week from submission of such proof.

If, subsequent to a recommitment, the child once again escapes from confinement, he/she shall be charged with violation of Section 15 of the Act and be subjected to compulsory confinement upon order of the Board or upon order of the court, as the case may be.

SEC. 20. Confidentiality of Records Under the Voluntary Submission Program. – The judicial and medical records of a child drug dependent under the voluntary submission program shall be confidential and shall not be used against him/her for any purpose, except to determine how many times the child by himself/herself, or through his/her parent, guardian, or relative within the fourth degree of consanguinity or affinity underwent voluntary submission for confinement, treatment and rehabilitation or commitment to a Center or to the custody and care of a DOH-accredited physician under the program.

Where the child is not exempt from criminal liability under Section 55 of the Act, or when he/she is not rehabilitated under the voluntary submission program, or when he/she escapes again from confinement after recommitment, the records mentioned in the immediately preceding provisions that are necessary for conviction may be utilized in court as evidence against such child.

SEC. 21. Compulsory Confinement of a Child Drug Dependent Who Refuses to Apply Under the Voluntary Submission Program. – Notwithstanding any law, rule and regulation to the contrary, any child found to be dependent on dangerous drugs who refuses to apply under the voluntary submission program shall, upon petition by the Board or any of its authorized representatives, be confined for treatment and rehabilitation in any Center duly designated or accredited by the DOH.

A petition for the confinement to a Center of a child alleged to be drug dependent may be filed by any person authorized by the Board with the Family Court, or, in the absence thereof, the Regional Trial Court of the province or city where such person is found.

After the petition is filed, the court shall immediately order a hearing, fix a date therefor, and serve a copy of such order on the child and his/her parents, guardian or custodian.

If the facts established at the hearing so warrant, the court shall order the child to be examined by two physicians accredited by the Board. If both physicians conclude that the child is not a drug dependent, the court shall order his/her discharge. If either physician finds the child to be a dependent, the court shall conduct a hearing and consider all relevant evidence which may be offered. If the court finds the child to be drug dependent, it shall issue an order for his/her commitment to a treatment and rehabilitation center under the supervision of the DOH. In any event, the order of discharge or order of confinement or commitment shall be issued by the court not later than 15 days from the filing of the appropriate petition.

SEC. 22. Compulsory Submission to Treatment and Rehabilitation of a Child Drug Dependent Charged with an Offense. – If a child charged with an offense where the imposable penalty is imprisonment of less than six years and one day is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug dependent, the prosecutor or the court, as the case may be, shall suspend all further proceedings and transmit copies of the records of the case to the Board.

In the event the Board determines, after the medical examination, that public interest requires that such child drug dependent be committed to a Center for treatment and rehabilitation, it shall file a petition for commitment with the Family Court or, in the absence thereof, the Regional Trial Court of the province or city where the child is being investigated or tried: *Provided*, that where a criminal case is pending court, the petition shall be filed in such court. The court shall take judicial notice of the prior proceedings in the case and shall proceed to hear the petition. If the court finds the child to be a drug dependent, it shall order his/her commitment to a Center for treatment and rehabilitation. The head of the Center shall submit to the court every four months, or as often as the court may require, a written report on the progress of the treatment. If the child drug dependent is rehabilitated, as certified by the Center and the Board, he/she shall be returned to the court, which committed him/her, for discharge therefrom.

Thereafter, the prosecution of the child for any offense punishable by law shall be instituted or shall continue, as the case may be. In case of conviction and the child has been certified by the treatment and rehabilitation center to have maintained good behavior, the judgment shall indicate that the child shall be given full credit for the period he/she was confined in the Center: *Provided*, however, that when the offense is for violation of Section 15 of the Act and the child is not a recidivist, the penalty therefor shall be deemed to have been served in the Center upon the release of the child therefrom after certification by the Center and the Board that the child has been rehabilitated.

SEC. 23. Prescription of the Offense Charged Against a Child Drug Dependent Under the Compulsory Submission Program. – The period of prescription of the offense charged against a child drug dependent under the compulsory submission program shall not run during the time that said child is under confinement in a Center or otherwise under the treatment and rehabilitation program approved by the Board.

SEC. 24. Temporary and Final Discharge of the Child from Treatment and Rehabilitation in Compulsory Submission; Recommitment. – Upon certification by the Center that the child may temporarily be discharged therefrom, the court shall order the release of the child on the condition that he/she shall report to the Board through the DOH for after-care and follow-up treatment for a period not exceeding 18 months under such terms and conditions as may be imposed by the Board.

If at any time during the after-care and follow-up period the Board certifies to the complete rehabilitation of the child, the court shall order his/her final discharge and the immediate resumption of the trial of the case for which the child has been originally charged. Should the Board through the DOH find at any time during the after-care and follow-up period that the child requires further treatment and rehabilitation, it shall file a petition in court for his/her recommitment.

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SEC. 25. *Recommitment for Confinement and Rehabilitation Under the Compulsory Submission Program in Case of Escape.* – A child drug dependent who escapes from the Center may submit himself/herself to the Board for recommitment within one week from the date of his escape. The child may likewise be surrendered for recommitment within the same period by the parent, guardian or relative within the fourth degree of consanguinity or affinity.

If the child does not resubmit for confinement or is not surrendered for recommitment, the Board may apply with the court for the issuance of a recommitment order.

Upon proof of previous commitment of the child, the court shall issue an order for recommitment. If, subsequent to such recommitment, the child should escape again, he/she shall no longer be exempt from criminal liability for use of any dangerous drug, in which case, the corresponding charge for violation of Section 15 of the Act shall be filed against him/her.

SEC. 26. *Effect of Final Discharge.* – A child drug dependent committed under Sections 20, 22 and 23 of this Rule who is finally discharged from confinement shall be exempt from criminal liability for the use of a dangerous drug under Section 15 of the Act, without prejudice to the outcome of any pending case filed in court.

SEC. 27. *Non-rehabilitation After Recombitment.* – A child drug dependent who is not rehabilitated after a second commitment to the Center shall, upon conviction by the appropriate court, suffer the same penalties provided for under Section 15 of the Act, without prejudice to the outcome of any pending case filed in court.

SEC. 28. *Confidentiality of Records Under the Compulsory Submission Program.* – The provisions of Section 18 of this Rule regarding Confidentiality of Records Under the Voluntary Submission Program shall apply to a child drug dependent who is rehabilitated and discharged under a compulsory submission program, or is charged with violation of Section 15 of the Act. However, the records of a child who has not been rehabilitated or who escaped but has not surrendered within the prescribed period shall be forwarded to the court and the use of those records shall be determined by the court, taking into consideration the best interest of the child and public safety.

SEC. 29. *Automatic Suspension of Sentence.* – If a child drug dependent is under 18 years of age at the time of the commission of the offense and is found guilty thereof, the court shall determine and ascertain any civil liability. However, instead of pronouncing the judgment of conviction, the court shall place the child under suspended sentence, without need of application. Suspension of sentence shall still be applied even if the child is already 18 years of age at the time of the conviction.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures under the Rule on Juveniles in Conflict with the Law. While under suspended sentence, the child shall be under the supervision and rehabilitation surveillance of the Board, under such conditions that the court may impose for a period ranging from six to 18 months.

Upon recommendation of the Board, the court may commit the child under suspended sentence to a Center, or to the care of a DOH-accredited physician for at least six months, with after-care and follow-up program for not more than 18 months.

SEC. 30. *Discharge After Compliance with Conditions of Suspended Sentence.* – If the child drug dependent under suspended sentence complies with the applicable rules and regulations of the Board, including confinement in a Center or care of a DOH-accredited physician, the court, upon a favorable recommendation of the Board or the physician, shall discharge him and dismiss all proceedings under Section 11 of the Act.

SEC. 31. *Confidentiality of Records.* – Upon the dismissal of the proceedings against the child, the court shall enter an order to expunge all official records, other than the confidential record to be retained by the Department of Justice relative to the case. Such order, which shall be kept confidential, shall restore the child to his/her status prior to the case.

SEC. 32. *Non-liability for Perjury, Concealment or Misrepresentation.* – The child so discharged shall not be held thereafter to be guilty of perjury, concealment or misrepresentation by reason of failure to acknowledge the case or recite any fact related thereto in response to any inquiry made for any purpose.

SEC. 33. *Promulgation of Sentence.* – If the child violates any of the conditions of the suspended sentence, the applicable rules and regulations of the Board exercising supervision and rehabilitative surveillance, including the rules and regulations of the Center should confinement be required, he/she shall be returned to the court which, after due notice and hearing and after finding sufficient basis therefor, shall execute the judgment of conviction.

SEC. 34. *Probation in Lieu of Imprisonment.* – In cases involving violations of Sections 11 and 15 of the Act, the court, upon application and in its discretion, may place the child under probation. Probation may still be availed of even if the sentence provided under the Act is higher than that provided under the Probation Law.

The supervision and rehabilitative surveillance of the child who is placed under probation shall be undertaken by the Board or the DOH-accredited physician through the DOH in coordination with the Board of Pardons and Parole and the Probation Administration. Upon compliance with the conditions of the probation, the Board or the DOH-accredited physician shall submit a written report to the court recommending termination of probation and final discharge of the probationer. Thereupon, the court shall issue such an order.

SEC. 35. *Compliance with Community Service Orders.* – In cases involving violations of Section 15 of the Act, the court may impose community service in lieu of imprisonment. When so imposed, the order of the court shall be complied with under such conditions, time and place as it may determine according to its discretion, and upon the recommendation of the Board or the DOH-accredited physician.

The completion of the community service by the child shall be under the supervision and rehabilitative surveillance of the Board or the DOH-accredited physician during the period required by the court. Thereafter, the Board or physician shall tender a report to the court on the manner of compliance with the community service. The court in its discretion may order the extension of the community service or issue an order of final discharge.

In both cases, the confidentiality of the judicial records shall be maintained.

SEC. 36. *Credit in Service of Sentence.* – If the sentence promulgated by the court for the child requires imprisonment, the period spent by the child in the Center or under the care of the physician during the suspended sentence shall be deducted from the sentence to be served.

SEC. 37. *Records to be kept by the Department of Justice (DOJ).* – The DOJ shall keep a confidential record of the proceedings on suspension of sentence, and the record shall not be used for any other purpose unless beneficial to the child and ordered by the Court that handled the case.

SEC. 38. *Liability of a Parent or Guardian Who Refuses to Cooperate with the Board or any Concerned Agency.* – Any parent or guardian who, without valid reason, refuses to cooperate with the Board or any concerned agency in the treatment and rehabilitation of a child, or in any manner prevents or delays the after-care, follow-up or other programs for the welfare of the child drug dependent, whether under a voluntary or a compulsory submission program, may be cited for contempt by the court.

SEC. 39. *Gender-Sensitivity Training.* – No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender-sensitivity training.

SEC. 40. *Effectivity.* – This Rule shall take effect on November 5, 2007, after its publication in a newspaper of general circulation not later than October 5, 2007.

ADMINISTRATIVE MATTER NO. 02-1-18-SC
REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW
Effective December 1, 2009

SECTION 1. *Applicability of the Rule.* – This Rule shall apply to all criminal cases involving children in conflict with the law.

A child in conflict with the law is a person who at the time of the commission of the offense is below 18 years old but not less than 15 years and one day old.

This Rule shall not apply to a person who at the time of the initial contact as defined in Section 4(q) of this Rule shall have reached the age of 18 in which case, the regular rules on criminal procedure shall apply without prejudice to the rights granted under Sections 53, 54, 55 and 56 of this Rule.

SEC. 2. *Objective.* – The objective of this Rule is to ensure that the justice system treats every child in conflict with the law in a manner that recognizes and upholds human dignity and worth, and instills in the child respect for the fundamental rights and freedom of others. The Rule considers the developmental age of the child and the desirability of the child's reintegration in and assumption of a constructive role in society in accordance with the principles of balanced and restorative justice.

To attain this objective, the Rule seeks:

- (a) To provide child-appropriate proceedings, including programs and services for crime prevention, diversion, rehabilitation, re-integration and aftercare to ensure the normal growth and development of the child in conflict with the law;
- (b) To provide procedural rules dealing with children in conflict with the law that take into account their distinct circumstances, assure all parties of a fair hearing with each party's constitutional and statutory rights recognized and respected, and ensure that appropriate disposition measures are implemented by law enforcers, social services and the courts;
- (c) To divert from the formal justice system children in conflict with the law who can be cared for or placed under community continuum alternative programs of treatment, training and rehabilitation in conformity with the principles of balanced and restorative justice;
- (d) To deal with the child in a family environment whenever possible, and to separate the child from the parents only when necessary for the child's welfare or in the interest of public safety;
- (e) To remove from children in conflict with the law the stigma of criminality and criminal behavior;
- (f) To promote, facilitate and implement in administrative and judicial proceedings respect for the views of the child;
- (g) To provide for the care, protection and wholesome moral, mental, and physical development of children in conflict with the law; and
- (h) To promote and protect the rights and interest of children as zones of peace in situations of armed conflict, but who are alleged to be in conflict with the law. (a)

SEC. 3. *Interpretation.* – This Rule shall be interpreted liberally to promote the best interest of the child in conformity with Philippine laws, the United Nations' Convention on the Rights of the Child and relevant international treaties and protocols.

SEC. 4. *Definitions.* – As used in this Rule,

- (a) *Age of criminal responsibility* is the age when a child, 15 years and one day old or above but below 18 years of age, commits an offense with discernment.

- (b) *Bail* refers to the security given for the release of the child in custody of the law, furnished by the child, the child's parent, guardian, or a bondsman, to guarantee the child's appearance before any court. Bail may be posted in a form such as corporate security, property bond or cash deposit.
- (c) *Balanced and Restorative Justice* is a principle in juvenile justice that requires a process of resolving conflicts with the participation of the victim, the child in conflict with the law, and the community. It seeks to obtain reparation for the victim; reconciliation of the victim, the child in conflict with the law, and the community, and the reassurance that the child in conflict with the law can be reintegrated into society. It also enhances public safety by involving the victim, the child in conflict with the law, and the community in prevention strategies. (a)
- (d) *Best interest of the child* refers to the totality of the circumstances and conditions that are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.
- (e) *Case study report* is a written report on the social case inquiry conducted by the social worker of the local government unit or the Department of Social Welfare and Development or by the social worker designated by the court on the social, cultural, economic and legal status or condition of the child in conflict with the law. It shall include, among other matters, the child's developmental age; educational attainment; family and social relationships; the quality of the child's peer group; the strengths and weaknesses of the family; parental control; the child's attitude towards the offense; the harm or damage done to others resulting from the offense; record of prior offenses, if any; and the attitude of the parents towards the child's responsibility for the offense. The social worker shall also include an initial determination of the child's discernment in the commission of the offense. (a)
- (f) *Community continuum* refers to the after-care of a child in conflict with the law and is a community-based group therapy process that provides continuous guidance and support to the child in conflict with the law upon release from rehabilitation and subsequent reintegration into society. Community continuum for the child includes timely release, suitable residence, food, clothing, available employment and sufficient means to facilitate successful reintegration in society which shall be provided by the concerned local government unit and other appropriate agencies. (n)
- (g) *Corporal punishment* is any kind of physical punishment inflicted on the body as distinguished from pecuniary punishment or fine.
- (h) *Court* refers to a designated family court or in places where there are no designated family courts, any regional trial court hearing family and youth cases. (a)
- (i) *Deprivation of Liberty* refers to any form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will except by order of any judicial or administrative authority. (a)
- (j) *Discernment* means the capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act.
- (k) *Disposition conference* is a meeting held by the court with the social worker who prepared the case study report, together with the child in conflict with the law and the parents or guardian *ad litem*, and the child's counsel for the purpose of determining the disposition measures appropriate to the personal and special circumstances of the child.
- (l) *Diversion* refers to an alternative child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of the child's social, cultural, economic, psychological or educational background without resorting to formal court adjudication.
- (m) *Diversion programs* refer to programs the child in conflict with the law is required to undergo in lieu of formal court proceedings.
- (n) *Expedited Transfer of a Child* is a process where a child who commits an offense is immediately brought by the apprehending officer or private individual to a social worker for preliminary determination of discernment. (n)

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- (o) *Guardian Ad Litem* is a person appointed by the court to protect the best interest of the child. (a)
- (p) *In conflict with the law* means taken into custody, detained, or charged with the commission of an act defined and punished as a crime or offense under the law, including violations of traffic laws, rules and regulations, and ordinances of local government units. (a)
- (q) *Initial contact* refers to the apprehension or taking into custody of a child in conflict with the law by law enforcement officers or private citizens. It includes the time the child alleged to be in conflict with the law receives a *subpoena* under Section 3(b) of Rule 112 of the Revised Rules of Criminal Procedure or summons under Section 6(a) or Section 9(b) of the same Rule in cases that do not require preliminary investigation, or where there is no necessity to place the child alleged to be in conflict with the law under immediate custody. (n)
- (r) *Intake report* is the initial written report containing the personal and other circumstances of the child in conflict with the law prepared by the social worker assigned to assist the child entering the justice system.
- (s) *Intervention programs* refer to a series of individualized treatment activities or programs designed to address issues that caused the child to commit an offense. These may include counseling, skills training, education, and other activities that are aimed to improve and enhance the child's psychological, emotional and psychosocial well-being. (n)
- (t) *Law Enforcement Officer* refers to the person in authority or an agent as defined in Article 152 of the Revised Penal Code, including a *barangay tanod*. (n)
- (u) *Non-Serious Offense* refers to an offense where the imposable penalty for the crime committed is not more than six years imprisonment. (n)
- (v) *Probation* is an alternative disposition, ordered by the court, under which a child in conflict with the law is released after conviction and sentence and permitted to remain at home or with an appropriate custodian, subject to certain terms and conditions imposed by the court.
- (w) *Recognizance* is an undertaking in lieu of a bond, assumed by a mother or father, or appropriate guardian or custodian, or in their absence, the nearest relative, or any responsible member of the community to assume custody of a child in conflict with the law and be responsible for the appearance of the child in court whenever required during the pendency of the case. (a)
- (x) *Segregation* refers to the procedure where, upon initial contact with a child alleged to have committed an offense, the law enforcer places the child in a separate and different area from adult detention prisoners, and ensures that female children are separated from male children. (n)
- (y) *Serious offense* refers to an offense where the imposable penalty for the offense committed exceeds six years imprisonment. (a)
- (z) *Status offenses* refer to offenses that discriminate only against a child, such as curfew violations, truancy, parental disobedience and the like. (n)
- (aa) *Suspended sentence* is the holding in abeyance of the service of the sentence imposed by the court upon a finding of guilt of the child in conflict with the law, whereby the child undergoes rehabilitation within a fixed period under such terms and conditions as may be ordered by the court. (n)
- (bb) *Victimless Crimes* refer to offenses where there are no private offended parties. (n)
- (cc) *Youth detention home* refers to a 24-hour child-caring institution managed by accredited local government units and licensed and/or accredited non-government organizations providing short-term residential care for children in conflict with the law and where the child may be physically restricted by order of any judicial, administrative or other public authority, and from which the child is not permitted to leave at will, pending court disposition of the charge or transfer to other agencies or jurisdiction. (a)
- (dd) *Youth rehabilitation center* refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development, local government units, licensed and/or accredited non-government organizations monitored by the Department of Social Welfare and Development. The Center provides care, treatment and rehabilitation services for children in conflict with the law under a structured therapeutic environment through

the guidance of a trained staff, where the physical mobility of the children may be restricted pending court disposition of their cases. (a)

SEC. 5. Determination of Age. – The child in conflict with the law shall enjoy the presumption of minority and shall enjoy all the rights of a child in conflict with the law until proven to be 18 years old or older at the time of the commission of the offense. The age of the child shall be determined according to the following rules:

- (1) The best evidence to prove the age of a child is an original or certified true copy of the certificate of live birth;
- (2) In the absence of a certificate of live birth, similar authentic documents such as baptismal certificates and school records or any pertinent document that shows the date of birth of the child;
- (3) In the absence of the documents under paragraphs 1 and 2 of this section due to loss, destruction or unavailability, the testimony of the child, the testimony of a member of the family related to the child by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the child pursuant to Section 40, Rule 130 of the Rules on Evidence, the testimonies of other persons, the physical appearance of the child and other relevant evidence, shall suffice.

SEC. 6. Burden of Proof of Age. – Any person alleging the age of the child in conflict with the law has the burden of proving the age of such child.

If the age of the child is contested prior to the filing of the information in court, a case for determination of age under summary proceeding may be filed before a court which shall render its decision within 24 hours from receipt of the appropriate pleadings of all the parties. (n)

In all cases involving a child, the court shall make a categorical finding as to the age of the child.

SEC. 7. Exemption from Criminal Liability. – A child 15 years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program as provided for in Republic Act No. 9344 when consented to by the child and the parents. (a)

Exemption from criminal liability does not include exemption from civil liability which shall be enforced in accordance with the provisions of Article 221 of the Family Code in relation to Article 101 of the Revised Penal Code and Rule 111 of the Revised Rules of Criminal Procedure. If the act or omission of the child involves a *quasi-delict*, Article 2180 of the Civil Code shall apply.

SEC. 8. Procedure for Handling Children Exempted from Criminal Liability. – If it is determined at the initial contact that the child is 15 years of age or below, the procedure provided in Section 20, Republic Act No. 9344 shall be observed as follows:

- (a) The authority who had the initial contact with the child shall immediately release the child to the custody of the mother or father, or the appropriate guardian or custodian, or in their absence, the nearest relative.
- (b) The authority shall immediately notify the local social welfare and development officer of the taking of the child into custody.
- (c) The local social welfare and development officer shall, with the consent of the child and the person having custody over the child, determine the appropriate intervention programs for the child.
- (d) If the child’s parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered non-governmental or religious organization; a *barangay* official or a member of the Barangay Council for the Protection of Children; a local social welfare and development officer; or, when and where appropriate, the Department of Social Welfare and Development.
- (e) If the child has been found by the local social welfare and development office to be abandoned, neglected or abused by the parents, or if the parents and the child do not consent to or do not comply with the prevention program, the Department of Social Welfare and Development or the Local Social Welfare and Development Office shall file before the court a petition for involuntary commitment pursuant to Presidential Decree No. 603, otherwise known as “The Child and Youth Welfare Code.” (a)

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Sec. 9. Procedure for Children Not Exempted from Criminal Liability. – A child 15 years and one day old or above but below 18 years of age at the time of the commission of the offense shall, at the sound discretion of the court and subject to its supervision, be released on recognizance to the care of the willing and responsible mother or father, or appropriate guardian or custodian, or, in their absence, the nearest relative. However, if the prosecution determines that the child acted with discernment, the child shall be proceeded against in accordance with Sections 25 to 29 or, in case of diversion, Sections 31 to 38 of this Rule.

Sec. 10. Determination of Discernment. – Discernment is preliminarily determined by a social worker and finally by the court in the case of a child charged with a non-serious offense. In all other cases, discernment is determined by the court.

The determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behavior.

Sec. 11. Duties of a Person in Authority Taking a Child into Custody. – Any person taking into custody a child in conflict with the law shall:

- (a) Assign an alias to the child;
- (b) Ensure that the blotter details containing the true name of the child, if any, are modified, to reflect the alias by which the child shall be known throughout the proceedings;
- (c) Explain to the child in simple language and in a dialect that can be understood the reason for placing the child under custody, and the offense allegedly committed;
- (d) Advise the child of his/her constitutional rights in a language or dialect understandable to the child;
- (e) Present proper identification to the child;
- (f) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child;
- (g) Avoid displaying or using any firearm, weapon, handcuffs or other instrument of force or restraint, unless absolutely necessary and only after all methods of control have been exhausted and have failed;
- (h) Avoid violence or unnecessary force and refrain from subjecting the child to greater restraint than is necessary for apprehension and custody;
- (i) Ensure that a body search of the child is done only by a law enforcement officer of the same gender as that of the child;
- (j) Ensure expedited transfer of the child by immediately, or not later than eight hours after apprehension, turning over custody of the child to the local social welfare and development office or other accredited non-government organizations;
- (k) Notify the child's parents, guardians or custodians or in their absence, the child's nearest relative and the Public Attorney's Office of the child's apprehension;
- (l) Ensure that the child is not locked up in a jail or detention cell during the investigation;
- (m) Bring the child immediately to an available government medical or health officer for a thorough physical and mental examination;
- (n) Ensure that should detention of the child in conflict with the law be necessary, the segregation of the child be secured in quarters separate from that of the opposite sex and adult offenders, except where a child is taken into custody for reasons related to armed conflict, either as combatant, courier, guide or spy, and families are accommodated as family units in which case, the child shall not be separated from the family;
- (o) Record all the procedures undertaken in the initial investigation including the following: whether handcuffs or other instruments of restraint were used, and if so, the reason for such use; that the parents or guardian of the child, the Department of Social Welfare and Development, and the Public Attorney's Office were informed of

the taking into custody of the child and the details thereof; the measures that were undertaken to determine the age of the child, and the precise details of the physical and medical examination or in case of failure to submit a child to such examination, the reason therefor; and

- (p) Ensure that all statements signed by the child during the investigation are witnessed and signed by the child's parents or guardian, social worker or legal counsel in attendance. (n)

SEC. 12. *Rights of a Child Under Custody.* – At the custodial investigation, a child who has been taken into custody shall have the following rights:

- (a) At the police station, to be immediately assisted by a lawyer and a social worker who shall make sure that the child is effectively informed of his/her rights, as far as the child's maturity and discernment allow;
- (b) To demand that the questioning or interrogation take place in conditions that respect the rights of the child and are compliant with child-sensitive procedural rules;
- (c) To have the child's family located and notified with dispatch;
- (d) To be informed, together with the parents, guardians or custodians or nearest relatives, by the social welfare and development officer of the local government unit or of the Department of Social Welfare and Development of the consequences of the offense alleged to have been committed with a view towards counseling and rehabilitation, diversion from criminal justice system and reparation if appropriate;
- (e) To have the results of the child's medical and dental examination kept confidential unless otherwise ordered by the court. Whenever medical treatment for any physical or mental defect is necessary, to demand that steps must be immediately taken by the medical officer to provide the child with the necessary and proper treatment;
- (f) To have the right of privacy respected and protected at all times, including the utilization of all measures necessary to promote this right, including the exclusion of the media; and
- (g) While under investigation, not to be fingerprinted or photographed in a humiliating and degrading manner.

SEC. 13. *Taking Custody of a Child without a Warrant.* – The law enforcement officer or a private person taking into custody a child in conflict with the law without a warrant shall observe the provisions in Sections 5, 8 and 9 of Rule 113 of the Revised Rules of Criminal Procedure and shall forthwith deliver the child to the nearest police station. The child shall be proceeded against in accordance with Section 7 of Rule 112 of the Rules of Criminal Procedure.

SEC. 14. *Conduct of Initial Investigation by the Police.* – The police officer conducting the initial investigation of a child in conflict with the law shall do so in the presence of either or both of the parents, guardian or custodian, or in their absence, the nearest relative of the child, the child's counsel of choice, or a lawyer from the Public Attorney's Office, and the local social welfare officer. A representative of a non-government organization, religious group, or member of the Barangay Council for the Protection of Children shall be allowed to be present at the investigation in the absence of the parents, guardian, relative, or social welfare officer. (a)

SEC. 15. *Guidelines for Fingerprinting and Photographing of the Child.* – The following guidelines shall be observed when fingerprinting or photographing the child:

- (a) The child's fingerprint and photograph files shall be kept separate from those of adults and shall be kept confidential. They may be inspected by law enforcement officers only when necessary for the effective discharge of their duties and upon prior authority of the court; and
- (b) The fingerprints and photograph shall be removed from the files and destroyed: (1) if the case against the child is not filed, or is dismissed; or (2) when the child reaches 21 years of age and there is no record that the child committed an offense after reaching 18 years of age.

SEC. 16. *Intake Report by the Social Welfare Officer.* – Upon the taking into custody of a child in conflict with the law, the social welfare officer assigned to the child shall immediately undertake a preliminary background investigation of the child and, should a case be filed in court, submit to the court the corresponding intake report prior to the arraignment.

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SEC. 17. *Filing of Criminal Action.* – A criminal action may be instituted against a child in conflict with the law by filing a complaint with the prosecutor.

All criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the public prosecutor assigned to the court.

Petitions for confinement of a child drug dependent shall be filed under Section 21 of the Rule on Children Charged under Republic Act No. 9165. (n)

SEC. 18. *Prosecution of Civil Action.* – When a criminal action is instituted against a child in conflict with the law, the action for recovery of civil liability arising from the offense charged shall be governed by Rule 111 of the Revised Rules of Criminal Procedure.

SEC. 19. *Preliminary Investigation.* – As far as consistent with this Rule, the preliminary investigation of a child in conflict with the law shall be governed by Section 3 of Rule 112 of the Revised Rules of Criminal Procedure. A specially trained prosecutor shall be assigned to conduct the inquest, preliminary investigation and prosecution of the case involving a child in conflict with the law. The child, on the other hand, shall be assisted by a private lawyer or if none, a lawyer from the Public Attorney's Office. If there is an allegation or evidence of torture or ill-treatment of a child in conflict with the law during custody or detention, it shall be the duty of the prosecutor to investigate the same. (n)

SEC. 20. *Conduct of Preliminary Investigation.* – Preliminary investigation shall be conducted in the following instances: (a) when the child in conflict with the law does not qualify for diversion; (b) when the child, the parents or guardian do not agree to diversion as provided in Sections 27 and 28 of Republic Act No. 9344; or (c) when, after considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law. (n)

At the preliminary investigation, should there arise a need for clarificatory questions to be propounded on the child, the Rule on Examination of a Child Witness shall apply.

SEC. 21. *Filing of Information.* – If the investigating prosecutor finds probable cause to hold the child in conflict with the law for trial, there being discernment, the corresponding Resolution and Information shall be prepared for the approval by the provincial or city prosecutor, as the case may be. The child and the mother or father, or appropriate guardian or custodian, or in the absence thereof, the nearest relative, and the child's private counsel or lawyer from the Public Attorney's Office shall be furnished forthwith a copy of the approved resolution and the Information.

The Information shall be filed with the court within 45 days from the start of the preliminary investigation. (n)

No Information shall be filed against a child for the commission of the following:

- (a) status offenses;
- (b) vagrancy and prostitution under Section 202 of the Revised Penal Code;
- (c) mendicancy under Presidential Decree No. 1563; and
- (d) sniffing of rugby under Presidential Decree No. 1619.

Children taken into custody for the foregoing shall, with their consent and that of their parents, guardian or custodian, instead undergo appropriate counseling and treatment program. (n)

SEC. 22. *Duties of the Clerk of Court Upon Receipt of Information.* – The Clerk of Court, upon receipt of the Information, shall:

- (1) Maintain a separate case docket or logbook for cases involving children in conflict with the law. Whenever possible, the Clerk of Court shall use color coding or other method to easily distinguish the records of children in conflict with the law from the other case records;
- (2) Determine whether the offense charged qualifies for diversion, that is, it is punishable by imprisonment of not more than 12 years, regardless of fine, or fine alone regardless of the amount;

- (3) If the crime charged is punishable by such imprisonment, immediately assign a temporary case number in accordance with Section 23 of this Rule and raffle off the case to a court so that its Diversion Committee can immediately undertake the appropriate action under Section 33 of this Rule; and
- (4) If the crime charged does not qualify for diversion because it is punishable by imprisonment of more than 12 years, the case shall be assigned a regular criminal case docket number and raffled off to a court for formal proceedings. (n)

SEC. 23. Docketing of the Case. – A case that qualifies for diversion under paragraph 3 of the preceding Section shall not be docketed as a regular criminal case but instead shall be assigned a temporary case number as follows: CICL- (no.)___- (year)___-D (which means diversion), before the same is raffled off to the appropriate court.

SEC. 24. Venue. – Subject to the provisions of Section 15, Rule 110 of the Revised Rules of Criminal Procedure, any criminal or civil action involving a child in conflict with the law shall be instituted and tried in the appropriate court nearest the place where the offense was committed or where any of its essential elements occurred.

SEC. 25. Release of Children on Recognizance to the Parents, Guardian, Custodian or Nearest Relative. – The release of a child from custody during the pendency of the case involving a non-serious offense as defined in Section 4 (u) of this Rule may be ordered by the court only after a hearing for that purpose, and upon favorable recommendation of the social worker assigned to the child, with the conformity of the public prosecutor and the private complainant. The child shall be released to the custody of a willing and responsible mother or father, or appropriate guardian or custodian or in their absence, the nearest relative, who shall be responsible for the child’s good behavior and appearance in court whenever required.

No child shall be ordered detained in jail pending trial or hearing of the child’s case, subject to the provisions of this Rule. (n)

SEC. 26. Commitment and Transfer to a Youth Rehabilitation Center. – A child charged with a non-serious offense as defined in Section 4 (u) of this Rule, unless released on bail or recognizance, may be transferred to a youth detention home or rehabilitation center or other appropriate facility such as the Department of Social Welfare and Development which shall ensure the appearance of the child in court.

In the absence of a youth detention home established by the local government pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides or, a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court, or the Department of Social Welfare and Development or other appropriate local rehabilitation center, the youth shall be placed under the care of a provincial, city or municipal jail which shall ensure the appearance of the child in court when so required. (a)

SEC. 27. Bail as a Matter of Right. – All children in conflict with the law shall be admitted to bail as a matter of right before final conviction of an offense not punishable by *reclusion perpetua* or life imprisonment.

SEC. 28. When Bail Not a Matter of Right. – No child charged with an offense punishable by *reclusion perpetua* or life imprisonment shall be admitted to bail when evidence of guilt is strong. In this case, the court shall commit the child to a youth detention home or youth rehabilitation center, or in the absence thereof, to the care of a provincial, city or municipal jail as provided for in Section 27 of this Rule, which shall be responsible for the appearance of the child in court whenever required.

SEC. 29. Care of Child in Youth Detention Homes or Rehabilitation Centers. – The child in conflict with the law who has been transferred to a youth rehabilitation center or youth detention home shall be provided with a healthy environment. If the child is placed under the care of the provincial, city or municipal jail, the child shall be provided with adequate quarters separate from adults and prisoners of the opposite sex depending on the age, sex, sexual lifestyle, and such other circumstances and needs of the child.

SEC. 30. Case Study Report. – After the institution of the criminal action, the social worker assigned to the child shall immediately undertake a social case inquiry of the child and the child’s family, the child’s environment and such

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other matters relevant to aid the court in the proper disposition of the case. The report shall be submitted to the court preferably before arraignment. If not available at that time, the Report must be submitted to the court as soon as possible.

SEC. 31. *Diversion Committee.* – In each court, there shall be organized a Diversion Committee composed of its Branch Clerk of Court as chairperson; the prosecutor, a lawyer of the Public Attorney’s Office assigned to the court, and the social worker assigned by the court to the child, as members.

SEC. 32. *Proceedings before Arraignment.* – The Diversion Committee shall determine if the child can be diverted and referred to alternative measures or services. Subject to pertinent provisions of this Rule and pending determination of diversion by the Committee, the court shall release the child on recognizance to the parents, guardian or custodian, or nearest relative; or if this is not advisable, commit the child to an appropriate youth detention home or youth rehabilitation center which shall be responsible for the presence of the child during the diversion proceedings.

If the Diversion Committee determines that diversion is not proper, or when the child or the private complainant objects to the diversion, or when there is failure of the diversion program if undertaken by the child, it shall submit a report to the court recommending that the case be subjected to formal criminal proceedings. The court in turn shall direct the transmittal of the records of the case to the Office of the Clerk of Court for the assignment of a regular criminal docket number to the case as follows: CICL Crim. Case No. ___ - ___ (year). The Office of the Clerk of Court shall thereafter return the case to the court for arraignment and formal proceedings.

SEC. 33. *Proceedings before the Diversion Committee.* – Upon receipt by the Committee of a case for diversion from the Office of the Clerk of Court, the chairperson shall call for a conference with notice to the child, the mother or father, or appropriate guardian or custodian, or in their absence, the nearest relative, the child’s counsel, and the private complainant and counsel, to determine if the child can be diverted to the community continuum instead of formal court proceedings.

In determining whether diversion is appropriate for the child, the Committee shall consider the following factors:

- (a) The past records, if any, involving the child in conflict with the law;
- (b) The likelihood that the child will be an obvious threat to himself/herself and the community;
- (c) Whether the child has feelings of remorse for the offense committed;
- (d) If the child or the parents are indifferent or hostile; and whether the parents or guardians have the ability to properly guide and supervise the child;
- (e) The nature of the child’s relationships with peers and whether this will increase the possibility of delinquent behavior; and
- (f) If community-based programs for the rehabilitation and reintegration of the child are available.

If the Committee finds that diversion is appropriate, it shall design a diversion program in accordance with Section 34 of this Rule for the consideration and approval of the court.

Should the Committee determine that diversion is not appropriate, it shall make the corresponding report and recommendation in accordance with Section 31 of this Rule.

The Committee cannot recommend diversion in case the child or the private complainant objects.

SEC. 34. *Diversion Programs.* – The Committee shall design a diversion program taking into consideration the individual characteristics and peculiar circumstances of the child in conflict with the law. The program shall be for a specific and definite period and may include any or a combination of the following:

- (a) Written or oral reprimand or citation;
- (b) Written or oral apology;
- (c) Payment of the damage caused;

- (d) Payment of fine;
- (e) Payment of the cost of the proceedings;
- (f) Return of the property;
- (g) Guidance and supervision orders;
- (h) Counseling for the child and his family;
- (i) Training, seminars and lectures on (i) anger management skills; (ii) problem-solving and/or conflict resolution skills; (iii) values formation; and (iv) other skills that will aid the child to properly deal with situations that can lead to a repetition of the offense;
- (j) Participation in available community-based programs;
- (k) Work-detail program in the community; or
- (l) Institutional care and custody.

The Committee shall also include in the program a plan that will secure satisfaction of the civil liability of the child in accordance with Section 2180 of the Civil Code. Inability to satisfy the civil liability shall not by itself be a ground to discontinue the diversion program of the child. On the other hand, consent to diversion by the child or payment of civil indemnity shall not in any way be construed as admission of guilt and used as evidence against the child in the event that the case is later on returned to the court for arraignment and conduct of formal proceedings.

SEC. 35. *Hearing of Diversion Program.* – The court shall set the Committee’s diversion report and recommendation for hearing with notice to all parties, their counsel and members of the Committee within 10 days from receipt of such report.

The court shall act on the recommendation within five days from the termination of the hearing.

SEC. 36. *Undertaking.* – In all cases where a child in conflict with the law is granted diversion by the court, the child, together with the mother or father, or appropriate guardian or custodian, or in their absence, the nearest relative, and the child’s counsel shall sign an undertaking to comply with their respective duties and obligations under the terms and conditions of the diversion program. The program, which shall contain the express agreement by complainant assisted by counsel to the diversion of the child, shall be approved by and enforced under the supervision and control of the court. It shall contain the following minimum principal terms and conditions:

- (a) The child shall appear before the social worker assigned to the child by the Court that approved the diversion program at least once a month for evaluation of its effectiveness.
- (b) The child shall faithfully comply with the terms and conditions of the program. Should the child fail to do so, the Committee shall report such failure to the court which shall set a show-cause hearing with notice to the child and private complainant. The court shall thereafter determine whether to allow the child to continue with the diversion program, or to end the same and direct that the case now undergo a formal proceeding.
- (c) Should the child be permitted by the court to reside in a place under the jurisdiction of another court, control and supervision over such child shall be transferred to the appropriate court of that place. The diversion records of the case such as the minutes of the diversion proceedings, copy of the undertaking, the intake and case study reports and all other pertinent documents shall be transmitted to the court to which jurisdiction over the diverted child has been transferred.

SEC. 37. *Report of Social Worker.* – The court social worker shall conduct regular monthly visits to the child undergoing diversion proceedings and shall submit the corresponding reports about the status of the diverted child to the Committee. At any time before or at the end of the diversion period, the Committee shall file with the court a report recommending termination or extension of diversion, as the case may be. The report and recommendation shall be heard by the court within 15 days from receipt, with notice to the members of the Committee, the child, the mother or father, or the appropriate guardian or custodian, or in the absence thereof, the nearest relative, the child’s counsel, and the complainant and counsel.

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The court shall thereafter determine whether the diversion program has been fully and satisfactorily complied with.

SEC. 38. Closure Order. – On the basis of the report and recommendation of the Committee, the court may:

- (a) Issue a closure order terminating the case if it is convinced that the child has complied satisfactorily with the diversion program; or
- (b) Extend the period of diversion if it is convinced that the child may still be rehabilitated; or
- (c) Order the case to undergo formal court proceedings if it finds that the child has not complied with the diversion program, is incorrigible, or that the program is not serving its purpose.

In case of a judicially-approved transfer of residence of the child in conflict with the law, the court to which supervision of the diversion program was transferred shall make the proper finding. If it finds that diversion has been successful, it shall order the closure of the case. However, if it determines that diversion has failed, it shall return the case to the original court for formal criminal proceedings.

SEC. 39. Rights of the Child in Conflict with the Law. – In all criminal proceedings, the child in conflict with the law shall have the following rights which shall be respected and protected by the court:

- (a) To be presumed innocent until guilt is proved beyond reasonable doubt;
- (b) To be informed promptly and directly of the nature and cause of the charge and if appropriate, through the child's mother, father, legal guardian, or appropriate custodian;
- (c) To be present at every stage of the proceedings, from arraignment to promulgation of judgment. The child may, however, waive presence at the trial pursuant to the stipulations set forth in the bail bond, unless presence at the trial is specifically ordered by the court for purposes of identification. The absence of the child without justifiable cause at the trial of which there was due notice shall be considered a waiver of the right of the child to be present. Escape by the child under custody shall be deemed a waiver of the right to be present in all subsequent hearings until custody over such child is regained;
- (d) To have legal and other appropriate assistance in the preparation and presentation of the child's defense; in case of a child arrested for reasons related to armed conflict, to have immediate free legal assistance;
- (e) If detained, to be released (i) on recognizance to the willing and responsible mother or father or appropriate guardian or custodian, or in the absence thereof, the nearest relative; (ii) on bail; or (iii) by commitment to a youth detention home or youth rehabilitation center;
- (f) Not to be detained in a jail or transferred to an adult facility pending trial or hearing of the case, unless detention is used as a last resort which must be done for the shortest time possible, and only upon order by the court;
- (g) In case the child has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy:
 - (i) To be segregated and have separate detention quarters from adults except where families are accommodated as family units;
 - (ii) To immediate free legal assistance in the absence of private counsel;
 - (iii) To immediate notice of such arrest to the parents, guardians or custodians or nearest relatives of the child; and,
 - (iv) To be released on recognizance within 24 hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.
- (h) To testify as a witness in his/her own behalf; and subject to cross-examination only on matters covered by direct examination. The child shall not be compelled to be a witness against himself/herself and the child's silence shall not in any manner prejudice him/her;

- (i) To confront and cross-examine the witnesses against him/her;
- (j) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in the child's behalf;
- (k) To have speedy and impartial trial, with legal or other appropriate assistance and preferably in the presence of the child's parents or legal guardian or custodian, unless such presence is considered not to be in the best interest of the child taking into account the latter's age or other peculiar circumstances;
- (l) To be accorded all the rights under the Rule on Examination of a Child Witness;
- (m) To have the child's privacy fully protected in all stages of the proceedings; and
- (n) To appeal in all cases allowed and in the manner prescribed by law.

SEC. 40. Rights of Victims of Offenses Committed by Children in Conflict with the Law. – In any case involving a child in conflict with the law, the victim has the following rights:

- (1) To be reasonably protected from the child in conflict with the law;
- (2) To timely notice of any public proceeding, or any parole proceeding involving the crime or of any release or escape of the child in conflict with the law;
- (3) Not to be excluded from any public proceeding, unless the court, after receiving clear and convincing evidence, determines that the testimony by the victim would be materially altered if the victim heard other testimony in that proceeding;
- (4) To be reasonably heard at any administrative or public proceeding involving diversion, release, plea, suspension of sentence and determination of disposition measures, or any parole proceeding;
- (5) To confer with the prosecutor in the case;
- (6) To avail of legal assistance from the Public Attorney's Office, Integrated Bar of the Philippines any other legal aid office or any law practitioner;
- (7) To be informed of the availability of compensation from the Department of Justice Board of Claims in accordance with the provisions of Republic Act No. 7309 (1992);
- (8) To be entitled to support services from the Department of Social Welfare and Development and local government units;
- (9) To be entitled to all legal remedies and support as provided for under the Family Code;
- (10) To be informed of the rights and the services available to victims of offenses including the right to apply for a protection order;
- (11) To full and timely restitution as provided in law;
- (12) To proceedings that are free from unreasonable delay; and
- (13) To be treated with fairness and with respect for the victim's dignity and privacy.

SEC. 41. Responsibilities of the Court. – For the protection of the rights of the child in conflict with the law, the court shall have the following responsibilities:

- (1) To monitor the status of a child whose case is pending in its court placed in a youth detention center or other institution during the pendency of the child's case;
- (2) To receive and investigate complaints concerning violations of the rights of the child whose case is pending in its court;
- (3) To require all professionals working for the welfare of the child, such as barangay captains, teachers, social workers, medical professionals, and law enforcers, to render regular monthly reports to the court;

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- (4) To order access to adequate services for rehabilitation, counseling and other forms of reintegration for the child;
- (5) To ensure that the child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, and that such views be accorded due weight in accordance with the developmental age and maturity of the child;
- (6) To ensure that the child, either directly or through a representative, is provided the opportunity to be heard in all proceedings affecting such child;
- (7) To ensure communication at all times between the judge and the child;
- (8) To ensure that the child sits with close family members of the child's choice during the court proceedings;
- (9) To ensure that the child can communicate freely with counsel at all times;
- (10) To ensure that the child is informed in age-appropriate language of all stages of the judicial proceeding affecting such child;
- (11) To ensure that a child placed in a Youth Detention Home or Youth Rehabilitation Center or in any child facility be given appropriate medical examination in order to determine and put on record any evidence of ill-treatment; to identify any physical or mental condition requiring medical attention; and thereafter make sure that child is provided adequate treatment and medical attention;
- (12) To ensure that the child is informed as soon as possible of the death, serious illness or injury of any immediate family member and be allowed to visit the ill family member or attend the funeral, when appropriate and advisable;
- (13) To ensure that if a child dies during the pendency of the case or within six months of release, an independent inquiry is conducted on the circumstances of the death and a report thereof, including the child's death certificate, be made available to the child's mother or father, guardian, custodian or nearest relative;
- (14) When appropriate and advisable, to allow the child to temporarily leave the detention home or rehabilitation center by means of an "out-on-pass" order to attend special family occasions such as Christmas and New Year celebrations. The "out-on-pass" order shall contain reasonable restrictions to ensure safety, security and timely return to detention as may be determined by the court;
- (15) To allow at all times, and from the moment of initial contact, any member of the family or the guardian of the child to visit with the child, unless prejudicial to the latter's best interests;
- (16) To allow the appointment of a *Guardian Ad Litem* if available and advisable, to enable the child to raise concerns and complaints without fear of retribution; and
- (17) To undertake all other appropriate measures to ensure the promotion of the best interest of the child and the child's eventual reintegration in society.

SEC. 42. Determination of the Best Interests of the Child. – The following factors may be considered in determining the best interests of a child in conflict with the law: the child's age and sex, the child's mental and physical health, the mental and physical health of the parents, their lifestyle and other social factors; the emotional ties between the parents and the child, the ability of the parents to provide the child with food, shelter, clothing and medical care; the established living pattern for the child concerning school, home, community and religious institution, quality of schooling, the existence of other relatives who may be in a better position to be with the child and the child's relationship with these relatives; the child's background, maturity and level of understanding, sexual orientation, lifestyle and any other characteristics and needs of the child that the court may deem relevant.

SEC. 43. Arraignment and Plea. – The provisions of Rules 116 and 117 of the Revised Rules of Criminal Procedure shall apply to the arraignment of the child in conflict with the law. The arraignment shall be scheduled within three days from the date of receipt of the complaint or information by the court, unless a shorter period is provided for by law.

In case the child is not assisted by a private counsel, the court shall immediately appoint its Public Attorney as the child's counsel *de officio*.

Arraignment shall be held in chambers and conducted by the judge by furnishing the child and counsel a copy of the complaint or information, reading the same in a language or dialect known to and understood by the child, explaining the nature and consequences of a plea of guilty or not guilty and asking the child's plea.

SEC. 44. Pre-trial. – The provisions of Rule 118 of the Revised Rules of Criminal Procedure shall govern the pre-trial of the child in conflict with the law. Agreements or admissions made during the pre-trial conference shall be in writing and signed by the child, the mother, father or duly appointed guardian, and counsel; otherwise, the agreements or admissions shall not be admissible against the child.

Whenever possible and practicable, the court shall explore all possibilities of settlement of the case, except its criminal aspect. Plea bargaining shall be resorted to only as a last measure when it shall serve the best interest of the child and the demands of truth and restorative justice.

SEC. 45. Trial. – All hearings shall be conducted in a manner conducive to the best interest of the child and in an environment that will allow the child to participate fully and freely in accordance with the Rule on Examination of a Child Witness.

SEC. 46. Guiding Principles in Judging the Child. – Subject to the provisions of the Revised Penal Code, as amended, and other special laws, the judgment against a child in conflict with the law shall be guided by the following principles:

- (1) The judgment shall be in proportion to the gravity of the offense, and shall consider the circumstances and the best interest of the child, the rights of the victim, and the needs of society in line with the demands of balanced and restorative justice.
- (2) Restrictions on the personal liberty of the child shall be limited to the minimum. Where discretion is given by law to the judge to determine whether the penalty to be imposed is fine or imprisonment, the imposition of the fine should be preferred as the more appropriate penalty.
- (3) No corporal punishment shall be imposed.
- (4) In case of the presence of any exculpatory evidence or doubt in the prosecution's evidence, the doubt shall be resolved in favor of the child.

SEC. 47. Promulgation of Sentence. – If, after trial, the court should find the child in conflict with the law guilty beyond reasonable doubt of the offense charged, it shall impose the proper penalty, including any civil liability which the child may have incurred, and promulgate the sentence in accordance with Section 6, Rule 120 of the Revised Rules of Criminal Procedure.

SEC. 48. Automatic Suspension of Sentence and Disposition Orders. – If the child is found guilty of the offense charged, the court, instead of executing the judgment of conviction, shall place the child in conflict with the law under suspended sentence, without need of application. Suspension of sentence can be availed of even if the child is already 18 years of age or more but not above 21 years old, at the time of the pronouncement of guilt, without prejudice to the child's availing of other benefits such as probation, if qualified, or adjustment of penalty, in the interest of justice.

The benefits of suspended sentence shall not apply to a child in conflict with the law who has once enjoyed suspension of sentence, but shall nonetheless apply to one who is convicted of an offense punishable by *reclusion perpetua* or life imprisonment pursuant to the provisions of Republic Act No. 9346 prohibiting the imposition of the death penalty and in lieu thereof, *reclusion perpetua*, and after application of the privileged mitigating circumstance of minority.

If the child in conflict with the law reaches 18 years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with the provisions of Republic Act No. 9344, or to extend the suspended sentence for a maximum period of up to the time the child reaches 21 years of age, or to order service of sentence.

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SEC. 49. Disposition Conference. – In case of suspended sentence, the court shall set the case for disposition conference within 15 days from the promulgation of sentence with notice to the social worker of the court, the child and the parents or guardian *ad litem* of the child and the child's counsel, the victim and counsel. At the conference, the court shall proceed to determine and issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the child:

- (1) Care, guidance, and supervision orders;
- (2) Community service orders;
- (3) Drug and alcohol treatment;
- (4) Participation in group counseling and similar activities; and
- (5) Commitment to the Youth Rehabilitation Center of the Department of Social Welfare and Development or other centers for children in conflict with the law authorized by the Secretary of the Department of Social Welfare and Development.

SEC. 50. Compliance with Disposition Measures. – The social worker assigned to the child shall monitor the compliance by the child in conflict with the law with the disposition measures and shall submit regularly to the court a status and progress report on the matter. The court may set a conference for the evaluation of such report in the presence, if practicable, of the child, the parents or guardian, counsel and other persons whose presence may be deemed necessary.

SEC. 51. Discharge of Child Subject of Disposition Measure. – Upon the recommendation of the social worker assigned to the child, the court shall, after due notice to all parties and hearing, dismiss the case against the child who has been issued disposition measures, even before reaching 18 years of age, and order a final discharge if it finds that the child has been rehabilitated and has shown the capability to be a useful member of the community.

If the court finds that the child (a) is incorrigible; or (b) has not shown the capability of becoming a useful member of society; or (c) has willfully failed to comply with the conditions of the disposition or rehabilitation program; (d) or the child's continued stay in the training institution is not in the child's best interest, the child shall be brought before the court for execution of the judgment.

The final release of the child shall not extinguish the civil liability. The parents and other persons exercising parental authority over the child shall be civilly liable for the injuries and damages caused by the acts or omissions of the child living in their company and under the parental authority subject to the appropriate defenses provided by law.

SEC. 52. Probation as an Alternative to Imprisonment. – The court may, after it shall have convicted and sentenced a child in conflict with the law and upon application at any time, place the child on probation if qualified, in lieu of service of sentence taking into account the best interest of the child.

SEC. 53. Credit in Service of Sentence. – The child in conflict with the law who has undergone preventive imprisonment shall be credited in the service of the sentence consisting of deprivation of liberty, with the full time during which the child has undergone preventive imprisonment, if the child agrees voluntarily in writing to abide by the same or similar disciplinary rules imposed upon convicted prisoners, except in any of the following cases:

- (1) When the child is a recidivist or has been convicted twice or more times of any crime; or
- (2) When upon being summoned for execution of sentence, the child failed to surrender voluntarily.

A child who does not agree to the same disciplinary rules imposed upon convicted prisoners shall be credited in the service of the sentence with four-fifths of the time during which the child has undergone preventive imprisonment.

Whenever the child has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which the child may be sentenced and the case is not yet terminated, the child shall be released immediately without prejudice to the continuation of any on-going intervention program, and the trial thereof or the proceeding on appeal, if the same is under review. In case the

maximum penalty to which the child may be sentenced is *destierro*, the child shall be released after 30 days of preventive imprisonment.

Any form of physical restraint imposed on the child in conflict with the law, including community service and commitment to a rehabilitation center, shall be considered preventive imprisonment.

SEC. 54. Confidentiality of Proceedings and Record. – All proceedings and records involving children in conflict with the law from initial contact until final disposition of the case by the court shall be considered privileged and confidential. The public may be excluded from the proceedings and pursuant to the provisions of Section 31 of the Rule on Examination of a Child Witness, the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child may have the sentence suspended under Section 38 of this Rule or if the child may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The court shall employ other measures to protect confidentiality of proceedings including non-disclosure of records to the media, the maintenance of a separate police blotter for cases involving children in conflict with the law and the adoption of a system of coding to conceal material information, which will lead to the child's identity. The records of children in conflict with the law shall not be used in subsequent proceedings or cases involving the same offender as an adult.

SEC. 55. Non-liability for Perjury or Concealment or Misrepresentation. – Any person who has been in conflict with the law as a child shall not be held guilty of perjury or of concealment or misrepresentation by reason of failure to acknowledge the case or recite any fact related thereto in response to any inquiry.

SEC. 56. Sealing of Records. – The court, *motu proprio* or on application of a person who has been adjudged a child in conflict with the law, or if still a minor, on motion of the parents or legal guardian, shall, upon notice to the prosecution and after hearing, order the sealing of the records of the case if it finds that two years have elapsed since the final discharge of the child after suspension of sentence or probation, or from the date of the closure order and the child has no pending case of an offense or a crime involving moral turpitude.

Upon entry of the order, the case shall be treated as if it never occurred. All index references shall be deleted and in case of inquiry, the court, prosecution, law enforcement officers and all other offices and agencies that dealt with the case shall reply that no record exists with respect to the child concerned. Copies of the order shall be sent to these officials and agencies named in the order. Inspection of the sealed records thereafter may be permitted only by order of the court upon petition of the child who is the subject of the records or of other proper parties.

This procedure shall be without prejudice to the rule on destruction of video or audio tapes under Section 31 of the Rule on the Examination of a Child Witness.

SEC. 57. Prohibition of Labeling. – In the conduct of proceedings from initial contact with the child in conflict with the law to the final disposition of the case, there shall be no branding or labeling of the child as a young criminal, juvenile delinquent, prostitute, vagrant, or attaching to the child in any manner any derogatory description or name. Likewise, no discriminatory statements, conduct and practices shall be allowed, particularly with respect to the child's social or economic status, physical or mental disability or ethnic origin.

SEC. 58. Contempt Powers. – A person who directly or indirectly disobeys any order of the court or obstructs or interferes with its proceedings or the enforcement of its orders issued under this Rule shall be liable for contempt of court.

SEC. 59. Effectivity. – This Rule as revised shall take effect on December 1, 2009 after its publication in two newspapers of general circulation not later than November 27, 2009.

SUPREME COURT CIRCULAR No. 5

Issued on April 7, 1987

To: Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts

Subject: Special Rules in Criminal Proceedings Involving Youthful Offenders

The 1987 Constitution affirms the duty of the State to promote and protect the physical, moral, spiritual, intellectual and social well-being of the youth. (Section 13, Article II, 1987 Constitution). It has long been recognized that youthful offenders should be afforded special treatment in our judicial system. To attain this objective, the following special rules are established:

- (1) In every station of a multiple-sala trial court, except the Regional Trial Court stationed in the National Capital Judicial Region where designations were already extended in Administrative Order No. 35, Series of 1986, of this Court, cases involving youthful offenders shall be assigned exclusively to one or more branches designated by the Supreme Court. The judges thereof shall take cognizance of these cases in addition to their regular duties. This Rule does not apply to those cases whose trial had already been commenced which shall remain with the branches where they were assigned prior to the effective date of this Circular.
- (2) Every trial judge handling these cases shall endeavor to assign specific days for the trial thereof to the exclusion of criminal cases filed against adult offenders.
- (3) Trial judges should secure the assistance of the proper social welfare official in the area, including that of the local officer of the Department of Social Welfare and Development, and other private agencies devoted to the case and rehabilitation of such offenders.
- (4) Strict compliance with the provisions of the Child and Youth Welfare Code is herewith enjoined, specially the provisions of Article 191 thereof on the detention of youthful offenders.
- (5) Executive Judges conducting inspections of provincial or city jails and other detention centers should take particular attention to the treatment of youthful offenders therein confined, to determine whether there is compliance with the Child and Youth Welfare Code.
- (6) In all cases, the trial judges should so conduct their proceeding in a manner that would not traumatize the youthful offenders, and insure respect and protection for their human dignity.

For the purpose of implementing paragraph 1 hereof, the proper Regional Trial Court Executive Judges are hereby DIRECTED to submit within 10 days from receipt of a copy of this Circular their recommendations on the branch or branches to be designated.

This Circular shall take effect immediately.

(Sgd.) **CLAUDIO TEEHANKEE**
Chief Justice

SUPREME COURT
ADMINISTRATIVE CIRCULAR No. 23-95
Issued on October 11, 1995

To: Presiding Judge of All Trial Courts
Subject: Speedy Disposition of Cases Involving Children

All trial judges are enjoined to act with dispatch on all cases involving children, including, but not limited to child labor case under RA No. 7610, cases of child abuses and pedophilia.

It is directed that arraignment should be scheduled within a week after the accused is placed in the Court's custody or upon filing of the bail bond and pre-trial/trial shall commence within three days from arraignment.

Attention is called to Section 30 of RA No. 7610 which provides that violations of this Act should be heard in the chambers of the RTC duly designated as Juvenile and Domestic Relations Courts.

(Sgd.) **ANDRES R. NARVASA**
Chief Justice

ADMINISTRATIVE MATTER No. 00-8-03-SC
A RESOLUTION CLARIFYING THE DUTIES OF THE SOCIAL WORKERS OF THE FAMILY COURTS
OR REGIONAL TRIAL COURTS UNDER THE FAMILY COURTS ACT OF 1997
Effective September 1, 2000

On November 23, 1997, Republic Act No. 8369, otherwise known as the "Family Courts Act of 1997" (approved and signed on 28 October 1997) took effect. Section 10 of RA No. 8369 describes, among others, the duties of the Social Workers or Social Welfare Officers of the courts. The Social Workers shall be "qualified social workers" "with academic preparation in behavioral sciences to carry out the duties of conducting intake assessment, social case studies, casework and counseling, and other social services that may be needed in connection with cases filed with the court."

On the basis of the provisions of RA No. 8369, Social Workers of the courts should now be assigned to handle and attend to all social services required in all cases, including adoption cases, falling within the jurisdiction of the Family Court filed with and pending before either the Regional Trial Courts designated to hear and decided such cases or the regular Regional Trial Courts, as the case may be. These Social Workers should, in their own right, in the first instance and independently of the Department of Social Welfare and Development, conduct the case studies in adoption cases required by Article 33 of the Child and Youth Welfare Code, as amended, and submit their reports, with recommendations, to the courts handling and hearing such cases. In the preparation of case studies, the Social Workers of the courts need no longer coordinate with the Department of Social Welfare and Development or its representatives as prescribed by Circular No. 12 dated October 2, 1986.

The foregoing now applies, notwithstanding Section 11 of Republic Act No. 8552, otherwise known as the "Domestic Adoption Act of 1998," which provides that "[n]o petition for adoption shall be set for hearing unless a licensed social worker of the Department [of Social Welfare and Development], the social service office of the local government unit, or any child-placing or child-caring agency has made a case study of the adoptee, his/her biological parent(s), as well as the adopter(s), and has submitted the report and recommendations on the matter to the court hearing such petition." Section 11 does not mention the Social Workers of the courts among those who may undertake case studies in adoption cases. The enumeration under said Section of those who may conduct case studies in adoption cases should not be considered as exclusionary and should not bar the Social Workers of the courts from performing the function herein involved. Section 11 does not state that only those listed may conduct case studies in adoption cases or that only they have the exclusive authority to undertake the same.

The provisions of Circular No. 12 dated October 2, 1986 to the effect that the Social Workers of the courts should coordinate with the Department of Social Welfare and Development or its representatives in the preparation and submission of case studies in adoption cases have already been superseded by the relevant Sections of RA No. 8369.

This Resolution shall take effect on the first day of September 2000, and shall be published in a newspaper of general circulation.

(Sgd.) DAVIDE, JR. *CJ*, MELO, PUNO, KAPUNAN, MENDOZA, PANGANIBAN, QUISUMBING, PURISIMA, PARDO, BUENA, GONZAGA-REYES, YNARES-SANTIAGO, DE LEON, JR., BELLOSILLO *(on official leave abroad)*, *JJ*.

* This refers to the Family courts or, in the meantime that the Family Courts have not been established and organized in accordance with Section 3 of RA No. 8369, the Regional Trial Courts designated to handle the cases falling within the jurisdiction of the Family Courts pursuant to the Resolution dated February 1, 2000 of the Supreme Court *En Banc* in Administrative Matter No. 99-11-07-SC.

ADMINISTRATIVE CIRCULAR NO. 04-2002
SPECIAL TREATMENT OF MINOR DETAINEES AND JAIL DECONGESTION
Effective February 15, 2002

To: All Executive Judges and Judges of Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts

WHEREAS, the 1987 Constitution affirms the duty of the State to promote and protect the physical, moral, spiritual, intellectual and social well-being of the youth (Section 13, Art. II, 1987 Constitution);

WHEREAS, it has long been recognized that youthful offenders should be afforded special treatment in our judicial system;

WHEREAS, the situation of jails in cities and other highly populous areas in the country is very pathetic;

WHEREAS, an immediate solution is necessary in order to protect the interest and rights of prisoners, especially minor detainees, and to eradicate or at least minimize the congestion of jails in the country;

NOW, THEREFORE, it is hereby directed that the following guidelines be observed:

1. Effective immediately, trial judges shall hold regular dialogues, conferences, or visitations, in coordination with appropriate government agencies as well as the local chief executives, jail wardens, chiefs of police and officials from social welfare office, at least once a month with the inmates in all jails in their respective territorial jurisdiction.
2. Said dialogues, conferences, or visitations shall be for the following purposes:
 - a. To determine the sufficiency or manner of safekeeping and reformation of prisoners, especially minor detainees, as well as their proper accommodation and health;
 - b. To set limits to the number of detainees in jail, and provide for the segregation of minors from the adult prisoners;
 - c. To identify minor prisoners who are willing to plead guilty, if qualified, and to inform them of the benefits granted by the provisions of PD No. 603(The Child and Youth Welfare Code) on suspended sentence of minors; and
 - d. To order the release from detention of any accused who is already entitled to be released under the last paragraph of Article 29 of the Revised Penal Code, or who has already served his sentence, as the case may be, unless the release is unwarranted by reason of any lawful ground or cause;
3. Strict compliance with the provisions of RA No. 8369 (Family Courts Act of 1997) and its implementing guidelines is hereby enjoined.
4. Trial judges designated in the Family Courts shall endeavor to assign specific days for the trial of cases involving minor offenders to the exclusion of criminal cases against adult offenders.

A periodic report of such dialogues, conferences, or visitations should be submitted to the Court Administrator.

The Court Administrator shall implement this Administrative Circular.

This Administrative Circular shall take effect on February 15, 2002 and shall be published in a newspaper of general circulation before February 10, 2002.

Issued this first day of February 2002.

(Sgd.) **HILARIO G. DAVIDE, JR.**
Chief Justice

ADMINISTRATIVE MATTER No. 06-8-21-SC
RE: USE OF GENDER-FAIR LANGUAGE

Sirs/Mesdames:

Quoted hereunder, for your information, is a resolution of this Court dated September 5, 2006.

“A.M. No. 06-8-21-SC.- Re: Use of Gender-Fair Language. - The Court Resolved to

- a. **NOTE** the Letter dated August 22, 2006 of Associate Justices Ma. Alicia Austria-Martinez and Adolfo S. Azcuna, Committee on Gender Responsiveness in the Judiciary, endorsing Atty. Eden T. Candelaria’s letter and draft administrative circular that would aid in intensifying the use of gender-fair language in the Judiciary;
- b. **NOTE** the Memorandum of Atty. Eden T. Candelaria, Sub-Committee on the Promotion of the Use of Gender-Fair Language, informing the Court of the Sub-Committee’s projects, including the drafting of an Administrative Circular that would aid in intensifying the promotion of the use of Gender-Fair Language; and
- c. **APPROVE** the aforesaid Draft Administrative Circular, to wit:

Administrative Circular No. 82-2006
September 19, 2006

To: All Justices, Judges, and Employees of the Judiciary

Subject: Civil Service Commission Memorandum Circular No. 12, s. 2005
(Use of Non-Sexist Language in All Official Documents, Communications and Issuances)

Quoted hereunder is Memorandum Circular No. 12, s. 2005 of the CSC.

“Pursuant to CSC Resolution No. 050433 dated March 30, 2005, government officials and employees are encouraged to use non-sexist language in all official documents, communications, and issuances.

In line with the government’s efforts to integrate women’s concerns in its plans and programs through the years, the Civil Service Commission continuously undertakes gender mainstreaming activities, taking extra efforts in promoting gender-sensitivity in the bureaucracy. Beginning June 2000, gender and development (GAD) perspectives have been integrated in the conduct of civil service examinations partly through the use of non-sexist language in the test items. This has led to the Commission’s active campaign on the use of gender-fair language.

Language is a very essential tool in communication. It articulates consciousness, reflects culture, and affects socialization. Hence, the need to recognize the importance of transforming language from traditional usage to a more liberating one, that which is gender-sensitive.

Since government employees and officials encounter gender issues everyday, the use of non-sexist language in preparing letters, memoranda, and other issuances, will encourage them to make a conscious effort to avoid implicit and explicit discriminatory language against women or men. This, in turn, will help promote gender-sensitivity in the bureaucracy.

Attached are some suggestions on how to use non-sexist language.

Please be guided accordingly.

(Sgd.) KATRINA CONSTANTINO-DAVID
Chairperson

March 31, 2005.

SOME SUGGESTIONS ON HOW TO USE NON-SEXIST LANGUAGE

1. **Eliminate the generic use of he, his, or him unless the antecedent is obviously male by:**
 - a. **using plural nouns**

TRADITIONAL: The lawyer uses his brief to guide him.

- SUGGESTED: The lawyers use their brief to guide them.
- b. deleting *he, his, and him* altogether, rewording if necessary**
- TRADITIONAL: The architect uses his blueprint to guide him.
- SUGGESTED: The architect uses a blueprint as a guide.
- c. substituting articles (*a, an, the*) for *his*; using *who* instead of *he***
- TRADITIONAL: The writer should know his readers well.
- SUGGESTED: The writer should know the readers well.
- d. using *one, we, or you***
- TRADITIONAL: As one grows older, he becomes more reflective.
- SUGGESTED: As one grows older, one becomes more reflective.
- e. using the passive voice**
- TRADITIONAL: The manager must submit his proposal today.
- SUGGESTED: The proposal must be submitted by the manager today.
- 2. Eliminate the generic use of *MAN*. Instead, use *people, person(s), human(s), human being(s), humankind, humanity, the human race*.**
- TRADITIONAL: ordinary man, mankind, the brotherhood of man
- SUGGESTED: ordinary people, humanity, the human family
- 3. Eliminate sexism in symbolic representations of gender in words, sentences, and texts by:**
- a. taking the context of the word, analyzing its meaning, and eliminating sexism in the concept**
- TRADITIONAL: feelings of brotherhood, feelings of fraternity
- SUGGESTED: feelings of kinship, solidarity
- TRADITIONAL: the founding fathers
- SUGGESTED: the founders, the founding leaders
- TRADITIONAL: the Father of relativity theory
- SUGGESTED: the founder of relativity theory, the initiator of relativity theory
- b. finding precise words to delineate the thing itself from supposedly sex-linked characteristics**
- TRADITIONAL: Titanic was a great ship, but **she** now rests at the bottom of the sea.
- SUGGESTED: Titanic was a great ship, but **it** now rests at the bottom of the sea.
- TRADITIONAL: “Don’t let **Mother Nature** rip you off! **She’s** out to kill your car’s new finish... Stop **her**...”
- SUGGESTED: “Don’t let **Nature** rip you off” **It’s** out to kill your car’s finish... Stop it...”
- 4. Eliminate sexual stereotyping of roles by:**
- a. using the same term for both genders when it comes to profession or employment**
- TRADITIONAL: salesman, stewardess
- SUGGESTED: sales agent, flight attendant
- b. using gender fair terms in lexical terms**
- TRADITIONAL: sportsmanship
- SUGGESTED: highest ideals of fair play

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c. treating men and women in a parallel manner

TRADITIONAL: I now pronounce you man and wife.

SUGGESTED: I now pronounce you husband and wife.

d. avoiding language that reinforces stereotyping images

TRADITIONAL: a man's job, the director's girl Friday

SUGGESTED: a big job, the director's assistant

e. avoiding language that catches attention to the sex role of men and women

TRADITIONAL: working mothers, spinsters or old maids

SUGGESTED: wage-earning mothers, unmarried women

TRADITIONAL: busboys, chauvinist pigs

SUGGESTED: waiter's assistants, male chauvinists

5. Eliminate sexism when addressing persons formally by:

a. using Ms. Instead of Mrs.

TRADITIONAL: Mrs. dela Cruz

SUGGESTED: Ms. dela Cruz

b. using a married woman's first name instead of her husband's

TRADITIONAL: Mrs. Juan dela Cruz

SUGGESTED: Ms. Maria Santos-dela Cruz

c. using the corresponding titles for females

TRADITIONAL: Dra. Concepcion Reyes

SUGGESTED: Dr. Concepcion Reyes

d. using the title of the job or group in letters to unknown persons

TRADITIONAL: Dear Sir

SUGGESTED: Dear Editor, Dear Credit Manager, Dear Colleague"

For the information and guidance of all concerned."

Very truly yours,

(Sgd.) **MA. LUISA D. VILLARAMA**
Clerk of Court

OCA CIRCULAR No. 151-2010

Issued on October 26, 2010

To: All Judges of the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts

Subject: Speedy Disposition of Cases for Violations of Republic Act No. 9208 (The Anti-Trafficking in Persons Act of 2003) or Trafficking in Persons Cases

Republic Act No. 9208 was enacted in fulfillment of our international obligation to prevent, suppress and punish trafficking in persons, especially of women and children.

Section 16, Article III of the 1987 Philippine Constitution mandates that "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

Accordingly, Judges are directed to expedite the disposition of cases involving violation of RA No. 9208.

Where practicable and unless special circumstances require otherwise, cases involving violation of RA No. 9208 shall be heard continuously with hearing dates spaced not more than two weeks apart. Unnecessary delay should be avoided, strictly taking into consideration the Speedy Trial Act and SC Circular No. 38-98 dated August 11, 1998.

In this regard, you are all directed to submit to the Statistical Reports Division, Court Management Office, Office of the Court Administrator:

- (a) a list of cases involving trafficking in persons and their status and
- (b) copies of orders/decisions related thereto.

More importantly, pending human trafficking cases should be given priority and decided with dispatch, while newly-raffled cases should be heard and decided within 180 days from arraignment of the accused.

To monitor compliance therewith and the progress of human trafficking cases, you are all required to submit a report on the matter on or before November 30, 2010.

For strict compliance.

(Sgd.) **JOSE MIDAS P. MARQUEZ**
Court Administrator

OCA CIRCULAR No. 101-2013

Issued on August 5, 2013

To: All Executive/Presiding Judges of the First Level Courts

Subject: Implementation of Sections 2 and 3 of Republic Act No. 10158 (An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No. 3815, as Amended, Otherwise Known as The Revised Penal Code)

Republic Act No. 10158, entitled *An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code*, was passed into law on March 27, 2012 and published in the Official Gazette on May 14, 2012. Sections 2 and 3 thereof provide:

SEC. 2. Effect on Pending Cases. – All pending cases under the provisions of Article 202 of the Revised Penal Code on Vagrancy prior to its amendment by this Act shall be dismissed upon effectivity of this Act.

SEC. 3. Immediate Release of Convicted Persons. – All persons serving sentence for violation of the provisions of Article 202 of the Revised Penal Code on Vagrancy prior to its amendment by this Act shall be immediately released upon effectivity of this Act: *Provided*, That they are not serving sentence or detained for any other offense or felony.

For your information and guidance.

(Sgd.) **JOSE MIDAS P. MARQUEZ**
Court Administrator

DSWD ADMINISTRATIVE ORDER No. 10
SERIES OF 2007
Issued on June 28, 2007

Subject: Guidelines for Social Workers in the Handling and Treatment of Children in Conflict with the Law

I. Rationale:

Republic Act No. 9344 or the Juvenile Justice and Welfare Act of 2006 is a milestone in addressing the issues on children in conflict with the law (CICL) in the Philippines. It provides a paradigm shift from retributive to restorative justice which gives emphasis on making the CICL accountable for the act committed and rehabilitating the CICL rather than punishing him/her.

Section 16 of the law provides that all local government units (LGUs) shall appoint a duly licensed social worker to assist the CICL. With their critical role in the assessment of the presence or absence of discernment in the commission of a crime as well as the development and implementation of intervention and diversion programs, social workers are hereby provided with guidelines on how to effectively carry out their mandate. This guidelines shall also provide them with direction to actively engage the family and community in the rehabilitation and reintegration of the CICL.

II. Coverage:

This guidelines is intended for social workers of the following:

1. Department of Social Welfare and Development (DSWD)
2. City/Municipal Social Welfare and Development Office (C/MSWDO)
3. Provincial Social Welfare and Development Office (PSWDO)
4. DSWD licensed and accredited non-government organizations (NGOs)

III. Objectives:

This shall guide social workers in:

1. Handling and managing cases of the following:
 - a) CICL who is 15 years old and below
 - b) CICL who is above 15 but below 18 years of age but found to have committed a crime without discernment
 - c) CICL who is above 15 but below 18 years old who committed a crime with discernment where the imposable penalty is confinement/imprisonment of not more than six years.
2. Conducting diversion proceedings and implementing diversion programs.
3. Assisting in the conduct of diversion proceedings and the implementation of diversion programs for cases handled by the Katarungang Pambarangay, law enforcement officers and prosecutors.

IV. Definition of Terms

The following terms used in this guidelines shall be defined as follows based on Section 4 of RA No. 9344:

Child – refers to a person below 18 years old.

Child in conflict with the law – refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

Court – refers to a family court, or in places where there are no family courts, any regional trial court.

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Diversion – refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law (CICL) on the basis of his/her social, cultural, economic, psychological and educational background without resorting to formal court proceedings.

Diversion proceeding – refers to a meeting or series of meetings facilitated by either a social worker, *Punong Barangay*, law enforcement officer, prosecutor or a judge, depending on the level of diversion conducted, with a view to having the parties involved in the offense agree on the appropriate diversion program for the CICL. The modes used are conciliation, mediation and family conferencing.

Diversion program – refers to the program that the CICL is required to undergo after she/he is found responsible for an offense without resorting to formal court proceedings.

Intervention – refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of individualized treatment program which may include counseling, skills training, education, and other activities that will enhance the child's psychological, emotional and psychosocial well-being.

Law enforcement officer – refers to the person in authority or his/her agent as defined in Article 152 of the Revised Penal Code, including a barangay tanod.

Offense – refers to any act or omission whether punishable under special laws or the Revised Penal Code, as amended.

Recognizance – refers to an undertaking in lieu of a bond assumed by a parent or custodian who shall be responsible for the appearance in court of the CICL, when required.

Victimless crime – refers to an offense where there is no private offended party.

V. Procedures:

The following are the steps to be undertaken by a social worker immediately after having been notified by a law enforcement officer, to include the police, National Bureau of Investigation agents, barangay officials and *tanods*, of the apprehension of a child:

A. For CICL 15 years old and below

1. The C/MSWDO shall conduct an assessment on the circumstances and needs of the child as basis in determining immediate actions to be done. The social worker handling the CICL should not be the same social worker handling the victim if the latter is minor. If there is no available social worker in the city or municipal LCD who could handle the case of the victim, the case shall be referred to the PWSO or a DSWD licensed and accredited NGO social worker. The case may also be referred to DSWD but this course of action should be the last resort.

The C/MSWDO handling the CICL whose residence is outside the jurisdiction of the LGU where the offense is committed shall facilitate the turn-over of the case to the LGU where the CICL resides. The following documents shall be forwarded to the receiving LGU:

- a) C/MSWDO's initial assessment report
- b) CICL's medical certificate
- c) Other documents related to the apprehension of the CICL like police report
- d) Documents which prove that the CICL is 15 years old or below

If any of the following is present, the C/MSWDO shall immediately file in court a petition for involuntary commitment (Annex A) of the CICL:

- a) The CICL is abandoned, neglected or abused by parents or guardians.
- b) There is threat to the CICL's safety but parents refuse to allow his/her referral for temporary custody to LGU/DSWD institution or NGOs catering to CICL.

- c) Parents refuse to comply with intervention programs deemed necessary and appropriate for the CICL.

The DSWD social worker shall provide the C/MSWDO with technical assistance in filing a petition for involuntary commitment when indicated. (Rule 32 of the Implementing Rules and Regulations (IRR))

While the court is deciding on the petition, the CICL has to be referred for foster care or to an institution of the DSWD or to a DSWD licensed and accredited NGO , whichever is appropriate. The same shall apply to a CICL who has been involuntary committed.

- 2. The C/MSWDO shall prepare a social case study report (SCSR) (Annex B) not later than two weeks from the date the CICL was turned over to his/her office. The SCSR shall be the basis for implementing appropriate interventions.

In coming up with intervention programs, the social worker should always consider the needs and situations of the CICL and his/her family.

Below are examples of intervention programs:

- a) Counseling
- b) Life-skills trainings
- c) Support services to parents or guardians like parent effectiveness service, livelihood programs, livelihood skills trainings
- d) Referral of the CICL to other agencies for services like scholarship, psychiatric sessions, spiritual sessions, etc.
- e) Involvement of the CICL in youth organizations *e.g.* Pag-asa Youth Association in the Philippines
- f) Psychosocial and therapeutic programs

Aside from these identified interventions, the social worker should explore other activities appropriate to the needs of the child.

Likewise, for a CICL placed in a DSWD institution or DSWD licensed/accredited NGO institution, the center social worker shall develop, together with the CICL, an appropriate intervention program.

- 3. The C/MSWDO shall implement an intervention program with the child in coordination with the Barangay Council for the Protection of Children (BCPC), school, Sangguniang Kabataan Council, existing support organizations and community volunteers.

Suggested time frame for the provision of intervention program is six months to one year.

- 4. The C/MSWDO shall monitor the child's compliance and response to the intervention program. He/she may mobilize support structures to:

- a) Visit the CICL and his/her family at their residence;
- b) Interview neighbors, teachers, classmates and significant others about the status of the CICL's behavioral progress;

As part of monitoring, the C/MSWDO shall also require the CICL and his/her parents to report to his/her office at least once a month.

- 5. The C/MSWDO shall assess whether or not the rehabilitation goal has been achieved. He/she must consider the readiness of the family and community to accept the CICL. Likewise, he/she should consider the following:

- a) CICL's behavior in school which includes his/her compliance to school regulations, the way he/she interacts with teachers and classmates and his/her performance but not limited to such.

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- b) Conscious effort of the C/MSWDO to be involved in productive activities like attendance to spiritual sessions, sports and socio-civic activities.
 - c) She/he has not committed any other offense during the period of the intervention program.
 - d) She/he has established good relationship with the family and community or with the staff and co-residents in the center. Thus, neighbors/co-residents and center staff speak well of him/her
6. The C/MSWDO shall terminate the provision of interventions once the rehabilitation goal of the child has been achieved. However, if the C/MSWDO and his/her parents, guardian or persons having custody of him/her failed to comply with the intervention program despite exhausting all efforts to assist them, the C/MSWDO may file a petition for involuntary commitment of the child pursuant to Presidential Decree 603. (Rule 39)
 7. The C/MSWDO shall submit a quarterly report to the local council for the protection of children on number of cases served and implementation of intervention program.

B. For C/MSWDO above 15 but below 18 years of age

1. The C/MSWDO shall immediately turn over the child to his/her parents. However, if the social worker believes, based on his/her assessment that the child's immediate turn over to parents, guardians or relatives is not appropriate and possible, he/she shall turn over the child to a DSWD-accredited LGU facility, a DSWD licensed and accredited non-government organization or to a DSWD facility.
2. Not exceeding one week, the C/MSWDO shall prepare an assessment report on the absence or presence of discernment in the commitment of a crime. This shall be based on the following:
 - a) Facts and circumstances surrounding the case; (Rule 34.c1)
 - b) Educational level and performance of the child in the school; (Rule 34.c2)
 - c) Appearance, attitude and the child's demeanor before, during and after the commission of the offense. (Rule 34.c3)
 - d) Assessment of a psychologist or psychiatrist which the social worker may request.
3. The C/MSWDO shall submit the assessment report on the presence or absence of discernment to the referring law enforcement officer.
4. If the C/MSWDO has acted without discernment, the C/MSWDO shall manage the case of the child similar to that of the case of a C/MSWDO who is 15 years old or below (Please refer to item "A").
5. If the C/MSWDO has found the C/MSWDO to have acted with discernment and the crime committed is victimless with an imposable penalty of not more than six years of confinement/imprisonment, he/she shall determine whether or not a diversion is appropriate and desirable by considering the following:
 - a. Nature and circumstances of the offense (Rule 47.b1);
 - b. Frequency and severity of the act (Rule 47.b2);
 - c. Circumstances of the child (*e.g.* maturity, intelligence, etc. (Rule 47.b3)
 - d. Influence of the family and environment on the growth of the Child (Rule 47.b4)
 - e. Weight of the evidence against the child (Rule 47.b6)
 - f. Safety of the community (Rule 47.b7)
 - g. Best interest of the child (Rule 47.b8)

(Note: Please refer to Annex C- list of victimless crimes with imposable penalty of not more than six years of imprisonment)

However, if the C/MSWDO resides outside the jurisdiction of the LGU where the offense is committed, the case shall be turned-over to the LGU where the C/MSWDO resides. The said LGU shall take the responsibility of determining the appropriateness of a diversion.

The following documents shall be forwarded to the receiving LGU:

- a. Assessment report on discernment
 - b. Medical certificate
 - c. Other documents related to the apprehension of the C/MSWDO like police report
 - d. Documents which prove that the C/MSWDO is above 15 but below 18 years old.
6. If diversion is inappropriate and undesirable, the C/MSWDO shall issue a certification (Annex D) to this effect and refer the case to a prosecutor. (Rule 47.a)
 7. If diversion is appropriate and desirable, the C/MSWDO shall meet with the child and his/her parents or guardians to develop an appropriate diversion program, in coordination with the BCPC, the Sangguniang Kabataan Council, teachers if the C/MSWDO is enrolled, faith-based groups and non-government organizations, if available.

The following are examples of diversion programs:

- a. Counseling of the C/MSWDO and his/her family
- b. Attendance to trainings, seminars and lectures on anger management, problem solving or conflict resolution and values formation, among other life skills trainings.
- c. Participation in community-based programs, including community service
- d. Participation in education, vocational and life skills programs

However, if the C/MSWDO cannot obtain the consent of the C/MSWDO and his/her parents or guardians to a diversion contract, he/she shall refer the case to the prosecutor (Rule 47.a)

8. When agreements have been reached, the child and his/her parents together with the social worker handling the case shall sign a diversion contract (Annex E) containing actions to be undertaken by all parties involved.
9. The C/MSWDO shall implement a diversion program with the assistance of the community. The suggested length of the implementation of the diversion program is six months to one year except for cases in which the social worker believes that a longer period or thorough rehabilitation is needed.
10. The C/MSWDO shall monitor the compliance of C/MSWDO and his/her parents to the diversion contract by way of:
 - a) Visit to the C/MSWDO and his/her family at least once a month and more frequently as needed.
 - b) Visit to the school if the C/MSWDO is enrolled or to his/her place of work if employed.
 - c) C/MSWDO and his/her parents reporting (physically) to the social worker at least once a month.
11. If the C/MSWDO fails to comply with the diversion contract, the C/MSWDO shall certify (Annex D) that there is failure to the contract and refer the case to the prosecutor. (Rule 51.c)

C. For C/MSWDO who Committed Crimes with Victims

The role of the C/MSWDO in crimes where there are victims is to supervise the implementation of the diversion program. As such, she/he shall devise a monitoring and follow-up mechanism to ensure compliance of the child and his/her parents or guardian with the contract of diversion. Likewise, she/he shall determine the progress of the rehabilitation and reintegration of the C/MSWDO to the community. (Rule 51.b)

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If the C/MSWDO failed to comply with the diversion contract, the C/MSWDO shall certify (Annex D) that there is failure to the contract.

VI. Conduct of Diversion Proceedings:

Whether conducting a diversion proceeding or assisting in the conduct of such, the C/MSWDO shall ensure the following:

- a) The C/MSWDO understands and realizes his/her accountability, be remorseful of his/her actions and takes on the responsibility in repairing the harm done in lieu of filing a formal case in the court. (Rule 47.a5)
- b) The C/MSWDO is asked of the circumstances of the offense, the motives or purpose of the offense and the factors that led him/her to commit the offense. Likewise, he/she is asked about his/her personal circumstances including his/her parents and family, his/her peers and educational status (Rule 47.a2 and a3)
- c) Diversion proceedings shall be conducted in a place where the identities of the child and the parties concerned are kept confidential. (Rule 47.c)
- d) The record of proceedings shall be labeled "CONFIDENTIAL" and shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings. (Rule 86;F)
- e) C/MSWDO shall be encouraged to express himself/herself especially when deciding on the appropriate diversion program.
- f) Authorities conducting the proceedings shall use language and expressions that can be easily understood by the C/MSWDO. Expressions or words that insult or intimidate the C/MSWDO shall be avoided.
- g) Before asking the C/MSWDO to sign a diversion contract, the authorities conducting the diversion proceedings shall allow the C/MSWDO to read the contract. If the C/MSWDO cannot read, the content of the contract shall be interpreted and explained to him/her clearly.
- h) Schedule of the conduct of diversion proceedings shall not interfere with the C/MSWDO's attendance to school.
- i) The diversion proceedings shall be completed within 45 days upon submission of the case for diversion. When no agreements are reached after 45 days, the proceedings shall be terminated. The case shall then be filed according to regular judicial procedure. (Rule 47.f)

VII. Formulation of Diversion Program:

The C/MSWDO shall bear in mind that a diversion program is a package of interventions for C/MSWDO and their families which may include already existing programs in the community. Likewise, the delivery of the diversion program is not the social worker's sole responsibility. It is a community effort. The C/MSWDO shall mobilize community structures specially the BCPC and resources like volunteers in the implementation of the diversion program.

The following shall be considered when formulating a diversion program:

1. The child's feelings of remorse for the offense he/she committed (Rule 49.a1);
2. The parents' or legal guardians' ability to guide and supervise the child (Rule 49.a2);
3. The victim's view about the propriety of the measures to be imposed (Rule 49.a3);
4. The availability of community-based programs for the rehabilitation and reintegration of the child(Rule 49.a4);
5. Record of prior offense, if any (Rule 49.a5);
6. The C/MSWDO's individual circumstances including but not limited to his/her cultural, social, economic and religious circumstances.

VIII. Case Management:

In all CICL cases, the social worker shall make use of the case management as a framework utilizing the SCSR as a tool. Thus, he/she shall be guided by the following:

A. Identification of the Problem

Identifying the problem shall be the first task that a social worker should do once she/he starts with the management of the CICL's case. The social worker's main sources of information are the CICL and their parents or guardians.

In identifying the problem, the social worker must indicate the offense committed, the circumstances leading to the commitment of the crime and the immediate result of the crime to the CICL, his/her family and the community.

B. Data Gathering

The social worker shall gather relevant data which will help him/her understand fully the child's needs. These data should include the child's historical background, his/her strengths and weaknesses, values, plans, relationship with family and other individuals significant to him/her, ability to cope with problems or stressful conditions and his/her behavior in the community or in the school.

The social worker must also identify the socio-economic condition of the CICL's family, their values, relationship between and among family members, and the family relationship with the community.

It is also necessary that the social worker should take into consideration the community where the CICL and his/her family belong. Among the information that she/he should gather are the culture of the community which influences the child and his/her family's decision making and values in life, availability of basic social services, existence of support structures and the community's reaction to the offense committed as well as its readiness to accept the CICL.

C. Diagnostic Assessment

Based on the data gathered, the social worker shall define the problem, its causes and effects, why a certain type of intervention is required, the CICL and his/her family's motivation and capacity to utilize the help that will be provided.

D. Treatment Plan

Based on the assessment, the social worker shall formulate a treatment plan in agreement with the CICL and his/her family or guardians, indicating treatment goals, objectives, activities, strategies, persons responsible, time frame and expected output.

The treatment plan may be modified in the course of implementation when necessary.

E. Implementation of the Treatment Plan

The social worker shall implement the treatment plan together with the child and his/her family, guardian or relative in coordination with BCPC members, other disciplines or the center staff if the CICL is in an institution.

F. Monitoring and Evaluation

The progress of the CICL shall be monitored by the social worker using the treatment plan as reference. The social worker shall also evaluate whether or not the services provided respond to the needs of the child.

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G. Termination

If the evaluation points out that the desired behavior or changes in the C/ICL have been achieved and his/her parents have become fully capable of taking care of the child, the C/MSWDO shall now terminate the helping relationship.

For C/ICL placed in an institution, she/he shall be referred to the C/MSWDO for aftercare services.

This guidelines shall take effect immediately and revokes all other guidelines contrary to it.

Issued in Quezon City this 28th day of June 2007.

(Sgd.) **ESPERANZA I. CABRAL**
Secretary

