

RE: PROPOSED RULE ON COMMITMENT OF CHILDREN

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Acting on the letter of the chairman of the committee on revision of the rules of court submitting for this court's consideration and approval the proposed rule on commitment of children, the court resolved to approve the same. The rule shall take effect on April 15, 2002 following its publication in a newspaper of general circulation not later than March 15, 2002. February 28, 2002. (sgd.) hilario g. davide, jr. Chief Justice (SGD.) JOSUE N. BELLOSILLO (SGD) JOSE A.R. MELO Associate Justice Associate Justice (SGD.) REYNATO S. PUNO (SGD.) JOSE C. VITUG Associate Justice Associate Justice (SGD.) SANTIAGO M. KAPUNAN (SGD.) VICENTE V. MENDOZA Associate Justice Associate Justice (SGD.) ARTEMIO V. PANGANIBAN (SGD.) LEONARDO A. QUISUMBING Associate Justice Associate Justice (SGD.) ARTURO BUENA (SGD.) CONSUELO YNARES-SANTIAGO Associate Justice Associate Justice (SGD.) SABINO DE LEON, JR. (SGD.) ANGELINA SANDOVAL-GUTIERREZ Associate Justice Associate Justice (SGD.) ANTONIO T. CARPIO Associate Justice

Rule on Commitment of Children

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 eighteen 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 (5) 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, mal-treated, 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, occupational[^] 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 twenty-four 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. – (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:

- 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;
- The facts showing that the child is dependent, abandoned, or neglected;
- The facts showing who has custody of the child at the time of the filing of the petition; and
- 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 (5) 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 Sub-section (f) below and proceed with the hearing of the case with due notice to the provincial or city prosecutor. (e) Social Worker. - After the court sets the petition for hearing in accordance with Sub-section (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 eighteen (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 thirty (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, (I) 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 thirty (30) days nor later than sixty (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 (5) 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 Sub-section (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 P.D. No. 603 and Sections 9, 10 and 31 of R.A. No. 7610. 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. Contents of Verified Petition - The petition must state: The name and address of the child-placement or child-caring agency or individual to whose custody the child has been voluntarily committed; 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; 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. 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 (6) 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 P.O. No. 603 and Sections 9, 10 and 31 of R.A. 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 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. 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.

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