

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

SEVENTEENTH CONGRESS

First Regular Session

House Bill No. **00 775**

REPRESENTATIVES	
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DATE	30 JUN 2016
TIME	11:55 PM
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Introduced by **DIWA Party-list Representative Emmeline Y. Aglipay – Villar**

EXPLANATORY NOTE

Justice delayed is justice denied, and the sad fact is that the sheer number of cases filed in the country results in just such a denial of justice, even at the very first stage of the process. The fact that there can at times be confusion with regard to the exact responsibilities of the prosecutor and law enforcement during the initial investigation can lead to even more delays and frustration, even on part of the most diligent and well-meaning of public officials.

To this end, this bill, based on House Bill No. 2032 filed by Rep. Niel “Junjun” C. Tupas, Jr. last 16th Congress, with some changes on the criminal investigation procedure, seeks to provide a streamlined and rationalized criminal investigation process which harmonizes and integrates the functions of the investigating law enforcer and the investigating prosecutor in criminal investigations, as well as the role of the judge during the preliminary hearing.

Emmeline Y. Aglipay – Villar

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Representative, DIWA Party-list

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Introduced by **DIWA Party-list Representative Emmeline Y. Aglipay – Villar**

**AN ACT INSTITUTIONALIZING A CRIMINAL INVESTIGATION SYSTEM,
REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 5180, OTHERWISE
KNOWN AS "AN ACT PRESCRIBING A UNIFORM SYSTEM OF PRELIMINARY
INVESTIGATION BY PROVINCIAL AND CITY FISCALS AND THEIR
ASSISTANTS, AND BY STATE ATTORNEYS OR THEIR ASSISTANTS", AND
OTHER RELATED LAWS AND ISSUANCES**

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

SECTION 1. Short Title. This Act shall be known as the "Criminal Investigation Act of 2016".

SECTION 2. Declaration of Policy - It is hereby declared the policy of the State to ensure the speedy, effective, efficient and economical conduct of criminal investigations by enhancing the cooperation and coordination of law enforcement and prosecution agencies, streamlining the process of determining which criminal complaints should proceed to trial and eliminating bureaucratic layers which cause undue delays in the criminal justice process.

SECTION 3. Definition of Terms. -

- (a) "*Criminal Investigation System*" refers to the entire process of investigating the commission of a crime and determining whether there is sufficient cause to file a criminal case in court and hold a respondent for trial. It is composed of two (2) stages: the criminal investigation stage and the preliminary hearing stage.
- (b) "*Criminal investigation*" refers to the fact-finding inquiry conducted by law enforcement officers, under the direction of the investigating prosecutor, where evidence is gathered, with a view to determining whether a crime has been committed and whether a criminal information should be filed in court.
- (c) "*Investigating prosecutor*" refers to the Prosecutor General, Regional Prosecutors, State Prosecutors, Provincial Prosecutors, City Prosecutors and their respective Deputies and Assistants and Prosecution Attorneys who have the authority to prosecute crimes within their respective jurisdictions. It shall also refer to the Ombudsman, the Special Prosecutor, their Deputies and Assistants, Graft

Investigation and Prosecution Officers and Special Prosecutors, in cases falling under the jurisdiction of the Office of the Ombudsman.

- (d) "*Law enforcement officer*" refers to officers and agents of the Philippine National Police, National Bureau of Investigation, Office of the Ombudsman, Philippine Drug Enforcement Agency, Bureau of Immigration, Bureau of Customs, Anti Money Laundering Council, Securities and Exchange Commission, Bureau of Internal Revenue, Philippine Coast Guard and other agencies which have the legal authority to enforce laws or investigate the commission of crimes.
- (e) "*Preliminary hearing*" refers to the proceedings conducted before the trial judge after a criminal information has been filed in court, during which the complainant and the respondent present their respective evidence to establish whether the case should proceed to a full-blown criminal trial.
- (f) "*Trial judge*" refers to the judge in whose court a criminal information is filed after the conclusion of the criminal investigation. The trial judge will conduct the preliminary hearing and thereafter decide whether the case will be dismissed or will proceed to trial.
- (g) "*Prima facie evidence*" refers to evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts.
- (h) "*Preponderance of evidence*" refers to the standard of proof where the evidence of one side is deemed by the court to be more convincing, of more probative weight, and more worthy of belief, than that which was offered in opposition to it.
- (i) "*Proof beyond reasonable doubt*" refers to the standard of proof which produces moral certainty, or that which produces conviction in an unprejudiced mind.

SECTION 4. Criminal Investigation System; Principles. The Criminal Investigation System shall be governed by the following principles:

- (a) The Criminal Investigation System shall be conducted in a speedy, effective, efficient and economical manner, with a view to facilitating the resolution of criminal cases, should they eventually reach the courts, through the systematic and proper gathering of evidence and forensic data, and accurate determination of perpetrators and their respective liabilities.
- (b) The Criminal Investigation System shall be composed of the criminal investigation stage and the preliminary hearing stage. During both stages, the primary aim of the investigating prosecutor and the trial judge is to determine whether there is sufficient evidence establishing the commission of a crime and linking the respondent to its commission, enough to justify the conduct of a full-blown criminal trial.
- (c) All criminal investigations shall be under the direct control and supervision of an investigating prosecutor. Law enforcers shall take guidance from and cooperate closely with the investigating prosecutor in the process of conducting criminal investigations, especially in matters concerning compliance with laws and rules of procedure, evidence-gathering and case-build up and preparation.
- (d) Upon the conclusion of a criminal investigation, the investigating prosecutor shall determine whether there is prima facie evidence that a crime has been committed, of which the respondent is probably guilty and should consequently stand trial.

The investigating prosecutor, in making such a determination, shall rely on the substance of the complaint or report, and the evidence gathered during the criminal investigation stage. The conduct of a criminal investigation is an executive function; it is neither judicial nor quasi-judicial and is not adversarial in nature.

- (e) Upon the filing of a criminal information, the trial judge to whose court it was raffled shall conduct a preliminary hearing and exert all effort to determine, by preponderance of evidence, whether there is sufficient cause for the respondent to stand trial. All remedies available to either parties at the preliminary hearing stage may be availed of, but the trial judge should not grant the same in a manner that would result in unnecessary delays.
- (f) All preliminary hearings shall be adversarial in nature, with the trial judge relying on the submissions, arguments and counter-arguments of the complainant and the respondent to arrive at a decision. However, the trial judge may be allowed to take an active part in the process and direct the course of the preliminary hearing by employing inquisitorial measures such as ordering the oral examination of witnesses or the production of additional evidence, if the same will aid in the weighing of the merits of both parties' evidence.
- (g) Except when there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction, the Criminal Investigation System, at any stage, shall not be restrained or enjoined by any court.

SECTION 5. Criminal Investigation; Initiation. — A criminal investigation may be initiated through the following modes:

- (a) *Upon a report received by a law enforcement agency - a law enforcement agency* may receive reports of a crime from private individuals and intelligence assets, or referrals/recommendations from other government agencies. In such cases, the law enforcement agency shall immediately coordinate with an investigating prosecutor to determine the course of the criminal investigation.
- (b) *Upon the instance of an investigating prosecutor - an investigating prosecutor* may initiate a criminal investigation in the following instances: (1) when a report or recommendation has been received regarding the commission of a crime, and (2) when such investigating prosecutor initiates an investigation to gather evidence on high incident crimes and other identified priority crimes. In such cases, the conduct and direction of the criminal investigation shall be determined by the investigating prosecutor, with the assistance of law enforcers.
- (c) *Upon the instance of an aggrieved party who files a criminal complaint - an aggrieved party* may formally file a criminal complaint in the prosecution office, accusing another person's of committing a crime. In such cases, the conduct and direction of the criminal investigation shall be determined by the investigating prosecutor, with the assistance of law enforcers.

SECTION 6. Criminal Investigation; Procedure. —

- (a) In cases where no criminal complaint is filed and the criminal investigation commences upon the instance of the law enforcer or the investigating prosecutor, as provided in Section 5(a) and (b) of this Act, the following rules shall apply:

1. All reports of a crime received by a law enforcer shall immediately be communicated to an investigating prosecutor, who shall lead the criminal investigation and direct its course, with the full cooperation and assistance of law enforcers concerned.
 2. If a report is received by an investigating prosecutor from any other office or agency, or if the investigating prosecutor initiates the investigation to gather evidence on high incident crimes and other identified priority crimes, coordination with the appropriate law enforcement agency shall be immediately established in order to commence the criminal investigation.
- (b) In cases where a criminal complaint is filed and the criminal investigation commences upon the instance of a private offended party, as provided in Section 5 (c) of this Act, the following rules shall apply:
1. The investigating prosecutor taking cognizance of a criminal complaint shall ensure that the same contains:
 - a. A statement of facts constituting the crime;
 - b. An allegation of the commission of a crime, with reference to the law's allegedly violated;
 - c. The names of persons being accused, and their addresses;
 - d. The affidavits of witnesses;
 - e. Supporting documents and other evidence relevant to the crime;
 - f. The signature of the complainant;
 - g. The complainant's certification of non-forum shopping.
 2. The complaint shall be sworn to by the complainant before the investigating prosecutor, who shall certify that the same represents the complainant's voluntary act and was fully understood by the complainant.
 3. The investigating prosecutor shall immediately coordinate with the appropriate law enforcement agency to enlist law enforcers who shall participate in the criminal investigation. The investigating prosecutor shall lead the criminal investigation and direct its course, with the full cooperation and assistance of law enforcers concerned.
- (c) The investigating prosecutor, as far as practicable, shall immediately proceed to the scene of the crime in order to supervise the investigation and ensure the compliance of all evidence-gathering techniques with applicable laws and rules, including rules on chain of custody over evidence.
- (d) During the criminal investigation, the investigating prosecutor shall exercise the following powers:
1. Initiate, manage and supervise all incidents of the criminal investigation, in coordination with concerned law enforcers;
 2. Perform all acts necessary to ensure the integrity of the criminal investigation process and its compliance with relevant laws and rules;
 3. Take custody of and preserve all relevant evidence and ensure the integrity of the chain of custody over evidence at all stages of the criminal investigation;
 4. Supervise intelligence-gathering, surveillance and other methods of investigation in relation to the crime;

5. Apply for warrants of arrest, search and seizure and such other processes as may be necessary in the course of the criminal investigation; and
 6. Direct law enforcers to submit inventories, reports, findings and other documents in connection with the criminal investigation.
- (e) During the criminal investigation, law enforcers shall exercise the following powers:
1. Conduct investigations, surveillance, intelligence-gathering, forensic examinations and other criminal investigative techniques under the authority of the investigating prosecutor and pursuant to the criminal investigation plan;
 2. Recommend to the investigating prosecutor the application for warrants of arrest, search and seizure in the course of the criminal investigation;
 3. Request for guidance and counsel from the investigating prosecutor, especially on points of law and legal procedure;
 4. Serve warrants of arrest, search and seizure as issued by the proper courts;
 5. Locate and secure witnesses and procure their sworn statements in connection with the crime being investigated;
 6. Locate and secure object evidence related to the criminal investigation, and turn over the same to the investigating prosecutor consistent with chain of custody rules. As much as possible, photographic or video recordings of object evidence must be taken by law enforcers, and the digital files that contain such information must be stored in at least two separate computers; and
 7. Prepare and sign reports, inventories and other papers necessary for the documentation of the criminal investigation. The same shall not be released to any third party except with the written clearance of the investigating prosecutor.
- (f) The investigating prosecutor shall determine whether the criminal investigation should be terminated. Upon its termination, the law enforcers concerned shall submit a case file containing all relevant statements of fact, inventory of evidence, affidavits, background information of persons connected with the criminal investigation, and other relevant facts to aid in the investigating prosecutor's determination of a prima facie case.
- (g) Within thirty (30) days, the investigating prosecutor shall determine, based on the case file, whether there is a prima facie evidence that a crime has been committed, warranting the filing of a criminal information against the person or persons criminally responsible.
- (h) The findings of the investigating prosecutor shall be contained in a Criminal Investigation Report. A Criminal Investigation Report finding the existence of a prima facie evidence of a crime shall include a criminal information naming the person or persons to be accused and their respective crimes.
- (i) The Criminal Investigation Report of an investigating prosecutor shall be approved or disapproved by the head of the prosecution office concerned. In case the Criminal Investigation Report is disapproved, the head of the prosecution office may reverse the findings of the investigating prosecutor and (1) proceed to dismiss the case, or (2) direct the filing of the criminal information in court, without need of further reinvestigation. The final decision of approval or disapproval by the head of the prosecution office shall be embodied in a Resolution; provided, that a disapproval of

the report must contain an explanation of such disapproval by the head of the prosecution office.

- (j) If a criminal investigation results in the dismissal of the case, the aggrieved party may seek reconsideration within five (5) days from the promulgation of the Resolution. No further appeals shall be available.
- (k) If a criminal investigation results in the finding of *prima facie* evidence, the criminal information's will be filed in court no later than five (5) days from the promulgation of the Resolution.

SECTION 7. Preliminary Hearing: General rules. – The following general rules shall apply to all preliminary hearings:

- (a) No motion for reinvestigation shall be entertained at the stage of the preliminary hearing, except on the ground of newly-discovered evidence.
- (b) During the preliminary hearing, the trial judge shall have the power to issue compulsory processes, resolve preliminary legal issues that will not prejudice the case, and issue Hold Departure Orders, Temporary Restraining Orders, Freeze Orders and other ancillary remedies.
- (c) The preliminary hearing shall be summary in nature and shall rely primarily on the written submissions, arguments and counter-arguments of the parties, unless the trial judge, upon motion of either party or *motu proprio*, decides to take an active part in the proceedings employ inquisitorial measures such as ordering the oral examination of any of the parties or witnesses, or the production of additional evidence, in order to clarify contentious matters.
- (d) Except for meritorious circumstances, preliminary hearings shall be concluded within a maximum of three (3) trial settings, but in no case longer than fifteen (15) days.

SECTION 8. Preliminary Hearing; Procedure. — Upon the filing of the criminal information in the proper court, the following procedure shall apply:

- (a) The criminal information shall be raffled to a trial judge, who shall promptly issue a subpoena to the complainant and the respondent, ordering them to appear in court for the preliminary hearing of the case. The respondent, together with the subpoena, shall be furnished a copy of the criminal information, criminal complaint and its supporting documents (in cases where a criminal complaint was filed), the Criminal Investigation Report and the Resolution.
- (b) The complainant shall be represented by the investigating prosecutor, who shall present the case of the complainant to the trial judge with reference to the criminal complaint and its supporting documents (in cases where a criminal complaint was filed), the Criminal Investigation Report, the Resolution and such other relevant documents as may assist the trial judge.
- (c) The respondent shall be represented by counsel and given the opportunity to interpose a defense. The respondent shall file a Reply which shall contain all the substance of the defense, together with the affidavits of witnesses and such other supporting documents as may be necessary to establish the case.

- (d) If a subpoena is returned unserved or if, despite due notice, the respondent fails to appear in court, the trial judge shall issue an order of default and proceed with the preliminary hearing *ex parte*, receiving only the evidence adduced by the prosecution. However, even in *ex parte* preliminary hearings, the trial judge may *motu proprio* order the prosecution to present witnesses for oral examination by the trial judge or produce additional documentary evidence to aid the trial judge's determination.
- (e) Upon termination of the preliminary hearing, the trial judge shall have five (5) days to determine, using the standard of preponderance of evidence, whether there is sufficient cause for the respondent to stand trial. If no such sufficient cause is found, the case shall be dismissed. Otherwise, the trial judge shall order that the case proceed to trial, and issue a warrant of arrest against the respondent, if proper.
- (f) Either party may request reconsideration of the decision of the trial judge within five (5) days from its promulgation. No further appeals shall be available.

SECTION 9. Implementing Rules and Regulations – Within sixty (60) days from the promulgation of this Act, an inter-agency committee composed of the Supreme Court, Department of Justice and law enforcement agencies shall issue implementing rules and regulations to govern the implementation of this Act.

SECTION 10. Separability Clause. - If any provision of this Act shall be declared unconstitutional, any other provision not affected thereby shall remain in full force and effect.

SECTION 11. Repealing Clause – Republic Act No. 5180, Presidential Decree No. 77 and Presidential Decree No. 911 are hereby repealed. All other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 12. Effectivity – This Act shall take effect within fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,