

EIGHTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. **1867**

EXPLANATORY NOTE

Matters about the arrest of persons have been regulated by procedural rules, despite its consequences being substantive in character. Arrest inevitably encroaches on the constitutional rights of the person arrested, and affects not only his person but also his family.

On the other hand, the duty of the State to check and suppress criminality may unreasonably be curtailed when the arrest is judicially declared as procedurally flawed, and thus the prosecution of the accused is rendered futile: criminality goes unabated, to the prejudice of the peace and order in the country.

In short, an arrest, whether done with or without a warrant, when judicially declared as wrongly done, brings about adverse consequence to social order. The aggrieved party, whether public or private, is often uncertain as to the specific redress for the wrong suffered.

The consequences above-observed could be avoided if a legislative enactment would govern the subject and define the parameters of a valid arrest, and prescribe a clear penalty for any violation of the provisions thereof.

Hence, approval of this bill is highly recommended.


RUFUS B. RODRIGUEZ

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AN ACT
PROVIDING FOR UNIFORM REQUIREMENTS AND/OR PROCEDURES FOR MAKING
ARRESTS AND FOR OTHER PURPOSES

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

SECTION 1. *Definition of Terms.* - As used in this Act, the term -

- a) "Arrest" means the taking into custody of a person for an alleged crime, to be investigated thereof and thus restraining his freedom of movement. It shall include the practice of issuing "invitation" for the same purpose in the character of a command which the person so invited cannot defy.
- b) "Probable cause" means such facts and circumstances as can convincingly engender a well-founded belief in an unbiased mind that the person to be arrested has indeed committed or is otherwise involved in the commission of a crime.
- c) "Warrant" refers to a written process issued by a judicial tribunal for the arrest of the person or persons specifically named therein.
- d) "Person" refers only to natural person.
- e) "Youthful offender" refers to any person who at the time of the commission of the offense and arrest is nine (9) years old or over but under eighteen (18) years of age, although emancipated in accordance with law.

SEC 2. *Probable cause mandatory.* - Arrest, as well as a search on the person of the subject to be arrested or on the occasion of such arrest, to be valid, must be by virtue of probable cause.

SEC 3. *Arrest upon a warrant.* - Except as otherwise authorized herein, arrest may be made only upon a warrant validly issued thereof. The determination of the existence of probable cause for the issuance of the warrant shall be done personally by the judge who signed the warrant, by examining the applicant therefor and his witnesses through searching questions whereof the answers given shall be under oath or affirmation and the proceedings duly recorded. The officer to whom the warrant of arrest was delivered for execution shall cause the same to be executed within ten (10) days from receipt thereof, and within ten (10) days after the period for execution of the warrant has expired, the officer assigned to execute the same shall make a report to the judge who issued the warrant. In case of failure to execute the same, he shall state the reasons therefor.

SEC 4. *Arrest without a warrant.* - A peace officer or any private person may, even without a warrant, effect an arrest:

- a) of any person who is attempting to commit a crime or actually committing a crime or has committed a crime in his presence or within his perception; or
- b) when an offense has just been committed and he has reasonable ground to believe based on facts or circumstances that a person to be arrested has committed it;

- c) when the person to be arrested is known to the person making the arrest to be a fugitive from justice or an escapee from a penal establishment or place of confinement where he is serving sentence or being held while his case is pending, or has escaped while being transferred from one confinement to another.

The person arrested without a warrant must be delivered to the nearest police station or jail without necessary delay. In cases falling under paragraphs (a) and (b) above, the arrested person shall be proceeded against in accordance with Section 7 of Rule 112 of the Amended Rules of Court.

SEC 5. Duties of Arresting Officer or Person – In making the arrest, the peace officer or private person shall act accordingly as follows:

- a) When the arrest is by virtue of a warrant, the officer making the arrest shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest, unless the giving of such information will frustrate the arrest. The officer need not have the warrant in his possession at the time of the arrest, the warrant shall be shown to the person arrested as soon as possible.
- b) When the arrest is without a warrant but by a peace officer, he shall inform the person to be arrested of his authority and the cause of the arrest, except when the latter is about to commit or is committing a crime or is being pursued immediately after its commission, or when the giving of such information will frustrate the arrest. If the arrest is by a private person, he should inform the person to be arrested of his intention to arrest him and the cause of the arrest, except when the same circumstances aforesated attend the arrest.
- c) when the arrest is made by a peace officer, the person arrested shall forthwith be immediately informed, in a language known to and understood by him, that he has the right to remain silent; that any statement he may make or give may be used against him; that he has the right to be assisted by counsel of his choice and if he could not afford to engage the services of counsel, the government shall provide him with one. Beyond these, the rights accorded by Republic Act No. 7438 to an arrested or detained person, in so far as not inconsistent with the provision of this Act, shall be observed and complied with.
- d) No violence nor force beyond what is necessary to place the person to be arrested under restraint, shall be employed in making the arrest.
- e) When the person to be arrested is a youthful offender, the officer or private person making the arrest shall observe and comply with pertinent rules of law governing such offender. If the youthful offender is below fifteen (15) years of age, he shall be released in recognizance within twenty-four (24) hours after arrest to the custody of his parents or of the Department of Social Welfare and Development who shall be charged with his custody.
- f) In offenses against decency, any photograph or picture taken of the offender or offenders on the occasion of the commission of the offense shall be strictly confidential and shall not be made public nor in any manner be disseminated. Such photograph or picture shall be sealed in an envelope or package, accompanied by an affidavit of the person who took or made the same, stating, *inter alia*, the date, time and place it was taken, the number of copies made thereof and certifying that no copies made thereof have been made other than those in sealed envelope or package.

SEC 6. Search on the Occasion of an Arrest. –When probable cause for an arrest exists, a peace officer or person acting in his place may frisk and contemporaneously search the person of the offender to be arrested, as well as the areas within his custody and immediate control, based on considerations of necessity to suppress criminal activities.

The admissibility in evidence of articles seized from the person arrested, confirmatory of the commission of an offense, shall not be affected by a judicial declaration of illegality or invalidity of the arrest, except when the evidence is shown to be merely "planted" to incriminate the person arrested. The illegality or invalidity of the arrest shall render the public officer or private person responsible thereof criminally, civilly and/or administratively liable as the case may be.

SEC 7. *Penalty clause.* - Any public officer or private person found to have violated any provision of this Act through manifest disregard of the rights of the aggrieved party, evident bad faith, or gross inexcusable negligence, shall suffer the penalty of imprisonment of not less than two (2) years nor more than six (6) years and/or a fine of not less than Six Thousand Pesos (P6,000.00) unless the violation is punished with a higher penalty under the Revised Penal Code or other law, higher penalty shall be imposed.

"Planting" evidence to incriminate an innocent person or otherwise make more serious or graver the offense committed by the person arrested, shall be punished with imprisonment of not less than six (6) years nor more than twelve (12) years and a fine of not less than Twenty Thousand Pesos (P20,000.00) unless the evidence planted consists of drugs and articles governed by Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) or the act is punished with a higher penalty by some other law.

SEC 8. *Separability Clause.* If for any reason a provision, portion or section of this Act shall be declared unconstitutional, the remainder shall not be affected thereby.

SEC 9. *Repealing Clause.* All laws, presidential decrees, executive orders, or rules and regulations, or parts thereof inconsistent with the provisions of this Act are repealed or modified accordingly.

SEC 10. *Effectivity.* This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in any daily newspaper of general circulation in the Philippines.

Approved,