

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

} '04 JUN 30 P4:36
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SENATE
S. No. 349

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

"Respect for the Constitution," to borrow Mr. Justice Cruz's words, is more important than securing a conviction based on a violation of the rights of the accused." The rights of an accused are so supreme that they are given paramount importance in our Constitution, laws and rules on criminal procedure. This right has been recognized and established in order to make sure that justice is done to the accused.

The rights of the accused are for the protection of the guilty and of innocent alike. Only the assurance that even the guilty shall be given the benefit of every constitutional guaranty can be innocent be secure in the same rights. Thus, the Supreme Court has always stressed its constant concern in due observance of the fundamental requirements of fairness and due process.

The constitutional provision specifically contained in the Bill of Rights is a declaration and enumeration of the individual rights and privileges which the Constitution is designed to protect against violations by the government, or by individuals or groups of individuals. It is a charter of liberties for the individual and a limitation upon the power of the state.

Indeed, it is unfortunate that the investigators who are sworn to do justice to all appear to have toyed with the fundamental rights of the accused. Men in uniform do not have blanket authority to arrest anybody they take fancy on, rough him up and put words into his mouth. Not only is there is a living Constitution which safeguards the rights of an accused, but a penal law which punishes maltreatment of prisoners and a statute which penalizes the failure to inform and accord the accused his constitutional rights.

This bill seeks to respond to an urgent need to codify a comprehensive set of safeguards for the protection of every person accused, arrested or under investigation for the commission of a crime pursuant to the Bill of Rights, Supreme Court pronouncements thereon, the rules of procedure and other applicable laws.

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


SERGIO OSMEÑA III
Senator

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S E N A T E

S. No. 349

Introduced by Senator S. R. Osmeña III

AN ACT
PROVIDING FOR THE RIGHTS OF THE ACCUSED AND PERSONS UNDER
INVESTIGATION FOR THE COMMISSION OF A CRIME, PROVIDING FOR
CIVIL AND CRIMINAL PENALTIES IN CASE OF VIOLATION THEREOF, AND
FOR OTHER PURPOSES

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

ARTICLE I

TITLE AND POLICY

SECTION 1. Short Title. – This Act shall be known as the “**2001
Omnibus Code on the Rights of the Accused and persons under
Investigation for the Commission of Crime**” and may be cited as such.

SEC. 2. Declaration of Policy. – It is the policy of the State to
complement the anti-crime campaign of the law enforcement agencies of the
government with a comprehensive set of safeguards to ensure compliance with
the Constitution, the Rules of Court and the pronouncements of the Supreme
Court on the Bill of Rights. It is likewise the policy of the State to enhance and
respect the basic rights of the individual before the law and the courts of justice
with the end view of achieving a moral, equitable, but effective administration of
criminal justice consistent with due process of law.

ARTICLE II

GENERAL PROVISIONS

SECTION 1. All persons under investigation for the commission of any crime punishable under existing laws or those who are actually charged therefor shall have the right to be presumed innocent and shall be entitled to the rights specified in the Philippine Constitution, international treaties ratified by the country and those in this Act.

SEC. 2. These rights shall be available and may be asserted at any stage of the criminal proceedings inclusive of the arrest and investigation stages.

ARTICLE III

RIGHTS DURING ARREST

SECTION 1. In case of an arrest with warrant, any person sought to be apprehended by any law enforcement or peace officer shall have the right to ask for the basis of the arrest and to require the arresting officer to show identification papers. A directive issued by the Chief of the enforcement agency to all law enforcement or peace officers regarding particular warrants of arrest issued by particular courts shall be enough to make an arrest. However, the person apprehended shall have the right to ask that a copy of warrant be exhibited to him/her upon reaching the law enforcement agency's headquarters/sub-station.

Arrests without warrant and those effected by private persons shall be carried out in accordance with Sections 8 and 9, Rule 113 of the Revised Rules of Court with the corresponding right of the person to be arrested to ask the peace officer or the private person, as the case may be, to exhibit identification papers as well as the reason for the arrest in order to prepare an adequate defense.

Failure on the part of the peace officer or private person to comply with the foregoing, when requested to do so, shall be sufficient legal ground for the person sought to be arrested to contest the arrest.

SEC. 2. After an arrest has been effected, the arresting officer shall immediately inform the person arrested of his/her right to remain silent and to be assisted by counsel. Every peace officer shall carry with him/her a warning card containing a recital of these rights both in English and Filipino or dominant dialect of the area in the following manner:

WARNING

Under the law, you have the following rights:

1. *You have the right to remain silent and not tell us anything. Anything you say may be used against you in court.*
2. *You have the right of counsel of your own choice before any questioning or investigation can take place.*
3. *If you cannot afford a lawyer, the court will give you one free of charge, before questioning.*
4. *You cannot waive these rights except in writing and in the presence of your counsel.*

BABALA

Sa ilalim ng batas, narito ang mga karapatan mo:

1. *Karapatan mo ang tumahimik at huwag magsalita ng kahit ano. Anuman ang sabihim mo ay maaaring gamitin sa hukuman laban sa iyo.*
2. *Bago ka imbestigahan, karapatan mo ang kumunsulta sa abogadong pinili mo.*
3. *Bago ka imbestigahan, kung hindi mo kayang kumuha ng sarili mong abugado, bibigyan ka ng hukuman ng isa nang walang bayad.*
4. *Maari mo lamang talikdan ang mga karapatang ito sa pamamagitan ng isang kasulatan na isinagawa mo sa tulong at sa harap ng iyong piniling abogado.*

1 The above rights shall be read by the arresting officer to the person
2 arrested in the language or dialect with which the latter is most familiar. In any
3 case, the officer shall exert all efforts to ensure that the person arrested has fully
4 understood said rights.

5 The warning shall also be written in big letters and prominently displayed
6 on the wall of the room where the custodial investigation is conducted so the
7 detained person can easily read them.

8 SEC. 3. If the person arrested has manifested his/her desire to avail of
9 the services of a lawyer but cannot afford one, the arresting officer shall
10 immediately comply with the provisions of Article VII of this Act. In the
11 meantime, no interrogation or questioning of any kind shall be conducted until
12 after the person arrested shall have conferred with his/her lawyer, either retained
13 or appointed, and has waived the right to remain silent or to counsel in writing
14 and in the presence of such counsel.

15 SEC. 4. No violence or unnecessary force, or display or threat thereof,
16 shall be employed in effecting the arrest. The person arrested shall not be
17 subjected to any undue restraint of liberty other than such as may be reasonable
18 necessary for his/her detention.

19 SEC. 5. The person arrested shall, without any delay, be delivered to the
20 nearest police station or jail having jurisdiction over the place of arrest and in no
21 other place. The arresting officer shall immediately and not later than six (6)
22 hours after the arrest inform the relatives or next-of-kin of the person arrested
23 present at the time of the arrest, or immediately after the arrest, of the site of
24 arrest, of the place where the person arrested will be brought and the exact
25 location thereof. In the absence of relatives or next-of-kin, the court shall be
26 informed of the arrest which shall immediately appoint a counsel for the accused.
27 If requested by the person arrested or his/her relative or next-of-kin, the arresting
28 officer shall allow one (1) relative, next-of-kin or friend to accompany him/her to

1 his/her detention place. In any event, the arresting officer shall enable the
2 person arrested to communicate with his/her relatives or next-of-kin by telephone
3 or other expedient means.

4 The police station or jail having jurisdiction over the place of arrest shall
5 maintain an accurate system of records-keeping on persons arrested and their
6 case status which shall be open to the public.

7 At the minimum, all places where persons are kept in custody shall keep
8 accurate records of the following:

- 9 a) the identity of all persons arrested;
- 10 b) the reasons for the arrest and authority therefor;
- 11 c) the time of arrest, the time of the taking of an arrested person to the
12 place of custody as well as the time and date of an arrested person's
13 first appearance before a judicial authority;
- 14 d) the identity of the law enforcement officials concerned;
- 15 e) the state of physical and psychological health of the person arrested;
- 16 and
- 17 f) the day and hour of release.

18 SEC. 6. It shall be unlawful for any person to deliver the person arrested
19 or to keep him/her in custody in any place of places other than that designated
20 by law. Female suspects shall at all times be attended to by female guards all
21 throughout the judicial process the suspect will undergo.

22 It shall likewise be unlawful for any person to employ any form of violence,
23 torture or attack, whether physical or psychological, upon the person or honor or
24 the prisoner, or to keep him/her in secret detention places, solitary confinement
25 or render him/her *incommunicado*.

26 SEC. 7. Any confession, admission or statement obtained from a person
27 in violation of the preceding sections of this Article shall be inadmissible as
28 evidence against him/her in any proceedings. In addition to his/her responsibility

1 under existing laws, the offender shall likewise be liable for the damages and
2 criminal liabilities prescribed in this Act.

3 SEC. 8. Preliminary investigation shall be conducted in accordance with
4 Rule 112 of the Revised Rules of Court strictly observing the periods prescribed
5 therein for the submission of affidavits, counter-affidavits, the replies thereto and
6 the resolution of the case after it has been submitted for determination. These
7 periods shall be mandatory and shall not be lengthened during the effectivity of
8 this Act.

9 The investigating prosecutor may dismiss the case after the lapse of the
10 periods referred to above without any fault on the part of the respondent or if it
11 appears, at any stage of the proceedings, that no sufficient evidence exists to
12 justify the prosecution of the respondent.

13 SEC. 9. An inquest procedure shall immediately be conducted to
14 ascertain whether the accused has committed the crime. An arrested person
15 shall be detained only for such periods of time allowed under Article 125 of the
16 Revised Penal Code. Within said periods, a complaint or information should be
17 filed if warranted by the evidence, otherwise the person arrested shall forthwith
18 be released.

19 SEC. 10. Whether through preliminary investigation or by inquest, the
20 right to be brought before a judicial court shall accrue immediately after arrest.
21 No person shall be kept under pre-trial detention more than what is provided for
22 in Rule 112 of the Revised Rules of Court.

23 ARTICLE IV

24 RIGHTS DURING CUSTODIAL INVESTIGATION

25 SECTION 1. Custodial investigation shall refer to the stage where the
26 investigation conducted by law enforcers is no longer a general inquiry into an
27 unsolved crime but has began to focus on a particular suspect who had been
28 taken into custody by law enforcement officers who carry out a process of

1 interrogation that lends itself to eliciting incriminating statements. It shall also
2 refer to instances when questions are initiated by law enforcement officers after
3 a person has been taken into custody or otherwise deprived of his/her freedom
4 of action in any significant manner. Custodial investigation shall also include any
5 questioning or probe involving a person "invited" by law enforcement officers in
6 connection with an offense he/she is requested to have committed.

7 SEC. 2. Any person "invited" to shed light on general matters, even
8 before such person is considered a suspect by law enforcement officers, shall
9 have the right to refuse the "invitation" without fear of punishment.

10 SEC. 3. Any person under custodial investigation as defined in Section 1
11 hereof shall have the right to remain silent and to refuse to answer any question
12 propounded to him/her. In addition, he/she shall have the right to consult and
13 confer with a lawyer preferably of his/her own choice. In the event that said
14 person cannot afford to hire a counsel, one shall be appointed to assist him/her
15 pursuant to the procedure prescribed in confrontation procedures such as line-
16 ups, one man show-ups, and re-enactment of the alleged crime without the
17 presence and assistance of counsel, unless he/she has, in the meantime,
18 executed a written waiver of his/her right to remain silent and to counsel under
19 this Article.

20 SEC. 4. Notwithstanding any incriminating evidence against him/her, the
21 refusal of a person under investigation to make any statement or provide
22 information shall not in any manner be used against or otherwise prejudice
23 him/her, any inference of guilt arise as a result thereof.

24 SEC. 5. Failure on the part of the prosecution to demonstrate during trial
25 that the accused was informed and afforded the rights mentioned in Section 3 of
26 this Article and was actually not afforded such rights, shall render any
27 information or evidence obtained as a result of the investigation inadmissible as
28 evidence against him/her in any proceedings.

SEC. 6. The rights provided in Section 3 hereof cannot be waived or renounced except in writing and in the presence of a counsel. The lawyer engaged by the person under investigation or duly appointed to assist him/her shall diligently discharge his/her duties and explain the full import of the rights and the effect of any waiver thereof.

SEC. 7. Any statement procured after a waiver under the immediately preceding section shall be sworn to before the proper administering officer. The latter, before administering the oath, shall ensure the voluntariness of the waiver and cause the confessant to undergo physical examination by an independent physician to determine whether or not force or violence, or threat thereof, was used in eliciting the statement or information.

SEC. 8. Any waiver made by any person under custodial interrogation pursuant to Section 6 hereof may be withdrawn at any stage of the investigation and he/she shall again be entitled to the rights provided herein. However, any confession duly made after a valid waiver but before the withdrawal thereof shall remain valid and admissible.

ARTICLE V

RIGHTS DURING INQUEST PROCEEDINGS

SECTION 1. Inquest proceedings shall refer to an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charge in court.

Inquest proceedings shall only proceed when the arrested or detained person does not opt for a preliminary investigation or otherwise refuses to execute the required waiver. Any person under inquest as defined in Section 1 hereof shall have the right to remain silent and to refuse to answer any question propounded to him/her. In addition, he/she shall have the right to consult and

1 confer with a lawyer preferably of his/her own choice. In the event that said
2 person cannot afford to hire a counsel, one shall be appointed to assist him/her
3 pursuant to the procedure prescribed in Article VII hereof.

4 SEC. 2. The City or Provincial prosecutor shall designate the prosecutors
5 assigned to inquest duties and shall furnish the Philippine National Police (PNP)
6 a list of their names and their schedule of assignments. If, however, there is only
7 one prosecutor in the area, all inquest cases shall be referred to him/her for
8 appropriate action.

9 Unless otherwise directed by the City or Provincial Prosecutor, those
10 assigned to inquest duties shall discharge their functions during the hours of
11 their designated assignments and only at the police stations/headquarters of the
12 PNP in order to expedite and facilitate the disposition of inquest cases.

13 SEC. 3. The inquest proceedings shall be considered commenced upon
14 receipt by the Inquest Officer from the law enforcement authorities of the
15 complaint/referral documents which shall include:

- 16 a) the affidavit of arrest;
- 17 b) the investigation report;
- 18 c) the statement of the complaint and witnesses; and
- 19 d) the supporting evidence gathered by the police according to law in the
20 course of the latter's investigation of the criminal incident involving the
21 arrested or detained person.

22 The Inquest Officer shall, as far as practicable, cause the affidavit of
23 arrest and statements/affidavits of the complaint and witnesses to be subscribed
24 and sworn to before him/her by the arresting officer and affiants.

25 The inquest proceedings shall be terminated within the period prescribed
26 under the provisions of Article 125 of the Revised Penal Code, as amended.

27 SEC. 4. In addition to the preceding list of documents, the Inquest
28 Officer shall require the submission/presentation of the documents listed in the

1 Department of Justice (DOJ) Circular No. 61 dated September 21, 1993 (New
2 Rule on Inquest) in specific cases. The submission of said documents in specific
3 cases shall not absolutely be required if there are other forms of evidence
4 submitted which will sufficiently establish the facts sought to be proved by the
5 foregoing documents.

6 SEC. 5. When the documents presented are not complete to establish
7 probable cause, the Inquest Officer shall direct the law enforcement agency to
8 submit the required evidence within the period prescribed under the provisions of
9 Article 125 of the Revised Penal Code, as amended; otherwise, the Inquest
10 Officer shall order the release of the detained person and, where the inquest is
11 conducted outside of office hours, direct the law enforcement agency concerned
12 to file the case with the City or Provincial Prosecutor for appropriate action.

13 SEC. 6. The presence of the detained person shall be ensured during
14 inquest proceedings. However, the production of the detained person before the
15 Inquest Officer shall be dispensed with in the following cases:

- 16 a) if he/she is confined in a hospital;
17 b) if he/she is detained in a place under maximum security;
18 c) if the production of the detained person will involve security risks; or
19 d) if the presence of the detained person is not feasible by reason of age,
20 health and other similar factors.

21 The absence of the detained person by reason of any of the foregoing
22 factors shall be noted by the inquest officer and reflected in the record of the
23 case.

24 SEC. 7. All charges and countercharges arising from the same incident
25 shall, as far as practicable, be consolidated and inquested jointly to avoid
26 contradictory or inconsistent dispositions.

27 SEC. 8. The Inquest Officer shall determine if the arrest of the detained
28 person was made in accordance with the provisions of paragraphs (a) and (b) of

1 section 5, Rule 113 of the 1985 Rules on Criminal Procedure, as amended. For
2 this purpose, the Inquest Officer shall summarily examine the arresting officers
3 on the circumstances surrounding the arrest of apprehension of the detained
4 person.

5 SEC. 9. Should the Inquest Officer find that the arrest was not made in
6 accordance with the rules, he/she shall:

- 7 a) recommend the release of the person arrested or detained;
- 8 b) note down the disposition on the referral document;
- 9 c) prepare a brief memorandum indicating the reasons for the action
10 taken; and
- 11 d) forward the same, together with the record of the case, to the City or
12 Provincial Prosecutor for appropriate action.

13 Where the recommendation for the release of the detained person is
14 approved by the City or Provincial Prosecutor but the evidence on hand warrant
15 the conduct of a regular preliminary investigation, the order of release shall be
16 served on the officer having custody of said detainee and shall direct the said
17 officer to serve upon the detainee the subpoena or notice of preliminary
18 investigation, together with the copies of the charge sheet or complaint, affidavits
19 or sworn statements of the complaint and his/her witnesses and other supporting
20 evidence.

21 SEC. 10. Should the Inquest Officer find that the arrest was properly
22 effected, the detained person shall be asked if he/she desires to avail
23 himself/herself of a preliminary investigation and, if he/she does, he/she shall be
24 made to execute a waiver of the provisions of Article 125 of the Revised Penal
25 Code, as amended, with the assistance of his/her lawyer and, in case of non-
26 availability, a responsible person of his/her choice.

27 The preliminary investigation shall be conducted by the Inquest Officer
28 himself/herself or by any other assistant prosecutor to whom the case may be

1 assigned by the City or Provincial Prosecutor, which investigation shall be
2 terminated within fifteen (15) days from its inception.

3 SEC. 11. The Inquest Officer shall proceed with the proceedings by
4 examining the sworn statements/affidavits of the complaint and the witnesses
5 and other supporting evidence submitted to him/her. He/She shall require the
6 presence of the complaint and witnesses and subject them to an informal and
7 summary investigation or examination for purposes of determining the existence
8 of probable cause.

9 SEC. 12. If the Inquest Officer finds that a probable cause exists, he/she
10 shall forthwith prepare the corresponding complaint/information, the contents of
11 which are stipulated in the DOJ Circular No. 61 dated September 21, 1993 (New
12 Rules on Inquest), with the recommendation that the same be filed in court. The
13 complaint/information shall indicate the offense committed and the amount of bail
14 recommended, if bailable.

15 Thereafter, the record of the case, together with the prepared
16 complaint/information, shall be forwarded to the City or Provincial Prosecutor for
17 appropriate action.

18 The complaint/information shall be filed by the Inquest Officer
19 himself/herself or by any other assistant prosecutor to whom the case may be
20 assigned by the City or Provincial Prosecutor.

21 SEC. 13. If the Inquest Officer finds no probable cause, he/she shall:

- 22 a) recommend the release of the arrested or detained person;
- 23 b) note down his/her disposition on the referral document;
- 24 c) prepare a brief memorandum indicating the reasons for the action
25 taken; and
- 26 d) forthwith forward the record of the case to the city or provincial for
27 appropriate action.

1 If the recommendation of the Inquest Officer for the release of the
2 arrested or detained person is approved, the order of release shall be served on
3 the officer having custody of the said detainee.

4 If the same is disapproved by the City or Provincial Prosecutor, the
5 arrested or detained person shall remain under custody, and the corresponding
6 complaint/information shall be filed by the City or Provincial Prosecutor or by any
7 assistant prosecutor to whom the case may be assigned.

8 ARTICLE VI

9 EFFECTIVE RIGHTS TO BAIL AND RELEASE OF RECOGNIZANCE

10 SECTION 1. All persons under detention, except those charged with
11 offenses punishable by *reclusion perpetua* or death when evidence of guilt is
12 strong before convictions, shall have the right to bail by sufficient sureties, cash
13 or property bond or shall be released on his/her own recognizance or that of a
14 responsible person as provided in this Article.

15 SEC. 2. The right to bail shall be available notwithstanding the
16 suspension of the privilege of the writ of *habeas corpus*.

17 SEC. 3. For offenses which are bailable by right, all matters pertaining to
18 bail reduction, recognizance, humanitarian grounds, health reasons, etc. shall be
19 resolved within seven (7) days from the date of the filing of the information at a
20 bail hearing, separate and distinct from the trial on the merits. The executive
21 judges of all trial courts shall be required to assign judges on a rotation basis for
22 bail hearing duty. A similar bail hearing shall be held for offenses which are non-
23 bailable be right within thirty (30) days from the filing of the information. At this
24 hearing, the prosecution shall present the evidence which constituted the main
25 case to qualify it as being "strong" and warranting denial of the right to bail.
26 Failure of the prosecution to terminated the presentation of its evidence within
27 this period shall automatically result in the granting of bail to and the immediate
28 release of the accused. The thirty (30) day period may be extended only if the

1 defense asks for an opportunity to present rebuttal evidence. For non-bailable
2 offenses, the presiding judge of the court where the case is pending shall sit as
3 bail hearing judge to facilitate the reception of evidence and for purposes of
4 speedy trial.

5 SEC. 4. Excessive amount of bail which has the effect of rendering
6 nugatory the very right itself shall be prohibited.

7 In fixing the amount of bail, the court shall be guided by Section 10, Rule
8 114 of the Revised Rules of Court with due consideration on the financial
9 capability of the accused to post bail or the propriety of his/her release on
10 recognizance.

11 Upon filing of an information, the court shall, *motu proprio* or upon motion
12 of the accused, judiciously review and decide on the amount of bail
13 recommended by the government prosecution agency and may modify or alter
14 the same.

15 SEC. 5. A person in custody shall, at the discretion of the court, be
16 released on reduced amount of bail or on his/her own recognizance or that of a
17 responsible person when:

18 a) He/She has been in custody for such period equivalent of at least the
19 minimum of the prescribed principal penalty of imprisonment for the
20 offense with which he is charged, without the application of Act No.
21 4103 (Indeterminate Sentence Law) or any aggravating and mitigating
22 circumstances; and

23 b) He/She is charged with a crime for which the law prescribes a
24 minimum imprisonment of not more than six (6) years.

25 In case a person is charged with two (2) or more offenses, the aggregate
26 of the respective maximum imprisonment attached thereto shall be the basis for
27 the application of this paragraph.

SEC. 6. Release on recognizance shall have the same effect and shall be subject to all conditions, rights, responsibilities and duties as if the accused has been released on bail.

The person to whom the body of the accused was released on recognizance shall exercise the rights and assume the duties and responsibilities of a surety under the Rules of Court.

SEC. 7. Notwithstanding the provisions of the foregoing sections of this Article, any person in custody against whom no information has yet been filed in court shall have the right to apply for bail or petition to be released on recognizance before any court in the province, city or municipality where he/she is detained.

SEC. 8. The filing of bail or a petition or motion to be released on recognizance shall not result in the waiver by the accused of his/her right to question any irregularity attending his/her arrest nor of his/her right to avail of any and all remedies under existing laws or rules of procedure.

SEC. 9. In the event that bail is denied or granted and the defense or prosecution wishes to challenge the trial court's decision before the appellate courts, a temporary restraining order preventing the release of the accused shall not have more than the usual twenty (20) day period of effectivity. For this purpose, the appellate court shall give priority to these cases as in *habeas corpus*.

ARTICLE VII

RIGHT TO ADEQUATE AND COMPETENT LEGAL ASSISTANCE

SECTION 1. Every person arrested, charged or under investigation for the commission of an offense shall have the right to a competent counsel in all stages of the proceedings against him/her, commencing from his/her arrest up to his final conviction or acquittal.

1 This right cannot be waived except in writing and in the presence of
2 counsel.

3 SEC. 2. The accused or the person arrested or under investigation shall
4 have the right to engage the services of a lawyer of his/her own choice and shall
5 be afforded reasonable opportunity to engage one. However, if he/she cannot
6 afford a lawyer, the court shall be immediately notified of the same and shall
7 cause the appointment of an adequate, competent and independent counsel *de*
8 *oficio* to assist and represent him/her in accordance with this article. In no case
9 shall counsel be any of those directly affected by the case, those charged with
10 conducting preliminary investigation or those charged with the prosecution of the
11 crime. Neither shall counsel be a lawyer under the authority, control, influence or
12 supervision of the military, police or prosecuting officials.

13 SEC. 3. The court shall, immediately after notification that a person has
14 been taken into custody or before the start of the investigation, give the latter the
15 opportunity to secure the services of a lawyer of his/her choice. If he/she cannot
16 afford one, the court shall, without delay, coordinate with the Public Attorney's
17 Office, the Integrated Bar of the Philippines or any public or private lawyers'
18 group or firm for the appointment of a counsel *de oficio*.

19 For purposes of this Act, the Department of Justice, in coordination with
20 the Integrated Bar of the Philippines, shall prepare a list of all lawyers, law firms
21 or lawyers' groups and their respective field or fields of practice or expertise.
22 Copies thereof shall be furnished the executive judges of all courts, the Court of
23 Appeals and the Supreme Court. Said lawyers, law firms and lawyers' groups
24 shall be available for appointment as counsel *de oficio*, under pain of disciplinary
25 action as determined by the Supreme Court, in case of unjustified refusal to
26 accept the appointment.

1 SEC. 4. Upon the filing of an information but before arraignment, the
2 court shall inquire whether or not the accused had been duly assisted and
3 represented by a counsel during his/her detention.

4 If no counsel has yet been appointed, the court shall allow the accused
5 reasonable opportunity to secure the services of a counsel *de parte*. If he
6 cannot afford one, the Public Attorney assigned in its sala shall be designated as
7 counsel *de officio*.

8 In the absence of the latter, or at the discretion of the court depending on
9 the case load of the Public Attorney, the complexity of the legal issues involved,
10 the expertise required or the gravity of the penalty prescribed for the offense, it
11 shall choose from among the list mentioned in Section 3 above the lawyer or law
12 firm who shall be appointed as counsel *de officio* to assist and represent the
13 accused. Every law firms with at least five (5) lawyers, shall be required to
14 handle one (1) *de officio* case every year. Every law firm with at least ten (10)
15 lawyers, shall be required to handle two (2) *de officio* cases every year. Every
16 law firm with at least fifteen (15) lawyers, shall be required to handle three (3) *de*
17 *officio* cases every year.

18 Notwithstanding, the fact that a counsel *de officio* has already been
19 appointed, the judge shall designate a new counsel to represent the accused if
20 he/she finds that the original lawyer has not been diligent in handling the defense
21 of the accuse, without prejudice to any possible responsibility of the erring lawyer
22 under this Act, his/her oath as a member of the Philippines Bar, the Code of
23 Professional Ethics and the existing laws.

24 The accused shall have the right to file a motion for new trial if he/she
25 believes that his/her conviction by a regular court resulted from a lack of due
26 diligence of the appointed ***counsel de officio***.

27 SEC. 5. The court shall at all times ensure that the appointed counsel *de*
28 *officio* diligently and adequately representing the accused and may issue such

1 orders as may be necessary for the implementation of this and the preceding
2 section.

3 SEC. 6. The palpable lack of diligence on the part of a duly appointed
4 counsel *de officio* in handling the defense of the accused shall be aground for
5 new trial under the Revised Rules of Court, without prejudice to the responsibility
6 of the appointed counsel for disciplinary sanctions.

7 **ARTICLE VIII**

8 **RIGHTS DURING DETENTION**

9 SECTION 1. All persons under detention, with females separate from the
10 males and adults from minors, whether by virtue of a final judgment or of an
11 arrest, whether lawful or unlawful, or during or while awaiting trial, shall be
12 treated humanely and shall not be subjected to any form of physical or
13 psychological harassment, violence, intimidation or threat thereof. He/She shall
14 not be kept in a place other than the ones legally established for the purpose.

15 Any violation of the foregoing paragraph shall be punished under Article
16 XIII of this Act in addition to whatever liabilities the offender may have under
17 existing laws.

18 SEC. 2. In addition to what has been provided in the immediately
19 preceding section, a detainee shall have the following rights:

- 20 a) The right to be visited by, and confer privately with counsel, whether
21 retained or appointed, at any time of the day, and in urgent cases, of
22 the night. Each place of custody/detention area shall have a special
23 room, free of nay monitoring devices, furnished with a table and at
24 least two (2) chairs, where client and counsel may discuss their case
25 confidentially. Prison guards shall not remain within earshot of the
26 conversation, but may view the conversation from afar.
- 27 b) The right, subject to reasonable regulations, to visitations by and
28 conferences and get-together with his/her immediate family. For

1 purposes of this Act, "immediate family" includes a person's spouse,
2 parent, child, or other ascendants and descendants and relatives by
3 affinity or consanguinity, fiancée or fiancé.

4 c) The right to be visited by, confer privately and coordinate with and air
5 grievances to representatives of the Commission on Human Rights or
6 any non-governmental organization duly accredited by the latter or by
7 any international non-governmental organization duly accredited by
8 the Office of President, Department of social Welfare and
9 Development and other appropriate government agencies.

10 d) The right to adequate medical and dental attendance, services and
11 periodic examinations to be provided by the Bureau of Prisons in
12 coordination with the Department of Health or other appropriate health
13 agencies of the government. In addition, the prisoner shall have the
14 right to consult or be examined or attended to by any private doctor or
15 dentist of his choice at all times. The Bureau and Department are
16 hereby empowered to promulgate the guidelines, policies and rules
17 and regulations to effectuate the provisions of this paragraph and
18 other related provisions of this Act.

19 e) The right to seek spiritual guidance which includes the opportunity to
20 be visited and counseled by or communicate privately with a priest,
21 clergy, minister, reverent, imam or representatives of any church or
22 denomination of the prisoner's choice, and to initiate, organize, attend
23 or otherwise, participate in any religious meetings, prayer rallies,
24 novenas, mass and similar activities held inside the detention center.

25 f) The right to pursue his education, both academic and vocational, while
26 under detention. The Department of Education and the states
27 colleges and universities shall, in coordination with the Bureau of
28 Prisons, formulate and carry out programs, training courses and

1 curricula to implement and carry into effect the provisions of this
2 paragraph.

3 g) The right to sports and development and recreational facilities and
4 programs while under detention.

5 SEC. 3. All detained persons who are not convicted of any crime, who
6 are awaiting trial or undergoing trial, shall have the right to privacy subject to
7 reasonable regulations. Searches of pre-trial detainee's living quarters shall be
8 restricted to contraband items and instruments allegedly to be used for escape.
9 Any papers or documents relating to the detainee's case shall not be taken.
10 Only authorities having jurisdiction over the place of custody shall be allowed to
11 search the detainee's quarters.

12 SEC. 4. The Bureau of Prison shall formulate guidelines and policies to
13 see to it that juvenile delinquents, youthful or first time offenders, political
14 prisoners, pre-trial detainees or detainees not yet convicted and those who
15 committed or are charged with light or minor felonies are segregated and
16 protected from hardened criminals.

17 The Bureau shall endeavor to curtail riots, free-for-all melee, "kakosa",
18 "mayor" and "cuerna" system, tattooing, initiation rituals, the use and possession
19 of prohibited drugs, weapons and other injurious paraphernalia, the commission
20 of lewd and indecent acts, and the proliferation of "gang-system" inside the
21 detention center and for that purpose, the Bureau shall promulgate and
22 implement reasonable but effective rules and regulations to achieve the same.

23 SEC. 5. The Bureau shall protect the person, honor and privacy to
24 female prisoners and they shall be provided with quarters and bathrooms
25 separate from the male prisoners. Minor prisoners shall likewise be provided
26 with separate quarters and the necessary facilities. Custodians and wardens of
27 female prisoners shall be females.

SEC. 6. The Bureau or any law enforcement agency holding a person under administrative detention or custodial investigation shall submit a report within twenty four (24) hours to the Commission on Human Rights any incidence of rape and/or death of any prisoner or person under administrative detention or custodial investigation.

ARTICLE IX

RIGHTS AT THE ARRAIGNMENT AND TRIAL

SECTION 1. In all criminal prosecutions, the accused shall be presumed innocent of the offense charged until his/her guilt is proved beyond reasonable doubt by admissible, competent and credible evidence consistent with due process of law.

No person shall be convicted unless his/her responsibility for the offense or offenses for which he/she is indicted is established in accordance with the degree of proof prescribed in this section.

SEC. 2. An accused shall have the right to be present and be heard in person and through counsel at every stage of the proceedings, from preliminary investigation or inquest up to his/her final conviction or acquittal, as the case may be.

The accused may nevertheless waive his/her presence at the trial. The effects of such waiver shall be governed by Section 1 (c), Rule 115 of the Revised Rules of Court. However, unless the accused himself/herself is a lawyer and desires to handle his/her own defense, the right to be heard by counsel shall not be waived.

SEC. 3. Upon motion of the accused, the court shall, without delay, cause the issuance of such subpoena *ad testificandum* and *duces tecum* to secure, under penalty of contempt, the attendance of witnesses and the production of documents and papers material to the defense of the accused. The court may, at its discretion, require the defense witnesses to post bail to

1 secure their attendance at the trial, or if they refuse to do so, in order not to
2 frustrate the ends of justice, order their arrest and detention for as long as their
3 testimonies are required.

4 SEC. 4. At the hearing set for the arraignment of the accused, the court
5 shall ensure that the accused is duly represented by counsel in accordance with
6 Section 4, Article IV hereof. Thereafter, the court shall, in open court, furnish the
7 accused with a copy of the information together with a list of prosecution
8 witnesses and exhibits. In addition, the information shall be read to the accused
9 in the presence of his/her counsel in the language or dialect known to the
10 accused, the court taking extra efforts to ensure that the latter fully understands
11 the accusations against him/her before entering his/her plea. The prosecution
12 may, however, be allowed to present additional witnesses and evidence not
13 listed in the information provided that the accused shall be afforded reasonable
14 time to study the additional evidence and prepare for cross-examination in
15 advance of the trial.

16 SEC. 5. Before entering his/her plea, the accused may move to quash
17 the information on grounds allowed by law and the court shall resolve said
18 motion with deliberate dispatch.

19 SEC. 6. In addition to other grounds under existing law and procedure,
20 the court shall suspend the arraignment in any of these cases:

- 21 a) If a motion to quash or motion for reinvestigation has been filed; and
22 b) If the possibility of the accused being placed in double jeopardy
23 appears to be well-founded.

24 SEC. 7. The conduct of arraignment and entering of plea shall be
25 governed by Rule 116 of the Revised Rules of Court unless otherwise provided
26 in this Article.

27 SEC. 8. In every criminal proceeding, the accused may altogether refuse
28 to take the witness stand. He/She may, however, present himself/herself as

1 witness for his/her defense in which case he/she may be cross-examined by the
2 prosecution but only on matters taken up during his/her direct examination.

3 The refusal of the accused to take the witness stand or to answer
4 incriminating questions propounded to him/her shall not in any manner prejudice
5 his/her defense nor shall any inference be presumed by reason thereof.

6 The right against self-incrimination may be invoked by the accused
7 personally or through counsel in the course of the examination.

8 SEC. 9. The accused shall have the right to meet face to face, confront
9 and cross-examine the witnesses against him/her in accordance with Section 6,
10 Rule 132 of the Revised Rules of Court. Without prejudice to the policy of
11 expeditious disposition of cases, the court shall afford the accused sufficient
12 opportunity to rebut the testimonies of witnesses against him/her through cross-
13 examination and other means allowed under the rules of procedure.

14 SEC. 10. In addition to the grounds enumerated in Section 13, Rule 119
15 of the Revised Rules of Court, the court may, *motu proprio* or upon motion,
16 exclude the public and the members of the press from the courtroom in the
17 exercise of its duty under Section 10 of this Article.

18 SEC. 11. At any stage of the prosecution and trial of a complaint for
19 rape, the police officer, the prosecutor, the court and its officers, as well as the
20 parties to the complaint shall recognize the right to privacy of the offended party
21 and the accused. Towards this end, the police officer, prosecutor, or the court to
22 whom the complaint has been referred may, whenever necessary to ensure fair
23 and impartial proceedings, and after considering all circumstances for the best
24 interest of the parties, order a closed-door investigation, prosecution or trial and
25 that the name and personal circumstances of the offended party and/or the
26 accused, or any other information tending to establish their identities, and such
27 circumstances or information on the complaint shall not be disclosed to the
28 public.

SEC. 12. The conviction or acquittal of an accused shall depend, not on his/her appearance, personality, reputation, previous criminal record and courtroom demeanor or on other external factors, but on the merits of the prosecution and defense evidence.

To this end, the jail warden or the officer holding the accused in custody, shall ensure, in coordination with the relatives and next-of-kin of the prisoner, that the latter is respectably dressed and groomed when attending court hearings. Unless there is a strong possibility of the accused attempting to escape, the accused shall not be presented before the court in prisoner's uniform or in handcuffs of similar devices designed to restrain freedom of action. The practice of shaving the head of detention prisoners and the inscription of tattoo marks on their bodies shall be prohibited.

SEC. 13. In all court hearings, the accused shall be entitled to be accompanied by his/her relatives and friends and seating spaces inside the courtroom shall be reserved for them.

SEC. 14. Every accused shall have the right to appeal all cases authorized by law and the applicable rules of procedure.

ARTICLE X

RIGHTS TO EXPEDITIOUS, PUBLIC AND IMPARTIAL DISPOSITION OF CASES

SECTION 1. All persons charged, facing trial, under investigation, arrested or detained for the commission of a crime shall have the right to speedy disposition of their cases and shall be spared from the anxiety and hardship of prolonged proceedings.

SEC. 2. Trial of criminal cases, once commenced, shall continue from day to day until terminated. This is without prejudice, however, to the right of the accused to prepare for trial in case a new witness or exhibit not listed in the information is allowed to be presented.

1 All trial courts shall devote at least fifteen (15) hours every working week
2 for hearing criminal cases pending before them.

3 The prosecution shall diligently prepare its case and its failure to present
4 or to continue in the presentation of its evidence for three (3) consecutive
5 hearing dates shall be a ground for dismissal. The same rule shall apply in case
6 of postponements made at the instance of the prosecution totaling eight (8)
7 hearing dates, although not consecutive. Such dismissals shall be equivalent to
8 an acquittal for purposes of the application of double jeopardy.

9 **ARTICLE XI**

10 **PROHIBITION AGAINST UNNECESSARY PUBLICITY**

11 SECTION 1. Without prejudice to the principle of free press and the
12 public's right to information, public prosecutors and administrative investigation
13 agents shall ensure that their investigations and inquiries are not conducted with
14 unnecessary publicity.

15 No person arrested or under investigation for the commission of a crime
16 or under detention by virtue of a final judgment or of an arrest, whether lawful or
17 unlawful, or during or while awaiting trial shall be put on public display in
18 handcuffs, marked apparel with unnecessary inscriptions, nametags and/or other
19 tags, or in any manner causing or tending to subject him/her to degradation,
20 dishonor, discredit, ridicule or contempt, nor shall such person be presented to
21 the press in such manner at the instance of the government.

22 Any person under custody or facing trial shall not be subjected to media
23 exposure which may tend to result in a trial by publicity or subject him/her to
24 discredit and contempt.

25 SEC. 2. The court shall protect the accused from unnecessary publicity
26 by controlling the release of information related to the facts and the conduct of
27 the case and shall caution or admonish the litigants and their counsel or any

1 other person from making out-of-court statements bearing on the issues of the
2 case.

3 SEC. 3. Whenever sufficient facts exist to show that a publicity campaign
4 is being conducted against the accused and there is reason to believe that such
5 campaign might influence the conduct or outcome of the proceedings, the court
6 shall transfer the venue of the case, postpone the hearings until the deluge of
7 publicity had subsided or issue such orders as it may deem proper to protect the
8 accused.

9 ARTICLE XII

10 RIGHT TO SUFFRAGE

11 SECTION 1. Any person under custodial investigation or under detention
12 while awaiting trial or final judgment or resolution of his/her case who is of voting
13 age shall have the right to suffrage.

14 SEC. 2. All government officials, to the extent practicable and compatible
15 with their primary responsibilities, shall assist the Commission on Elections
16 (COMELEC) in carrying out this Article. All such officials shall take reasonable
17 measures to expedite, transmit, deliver and return all election matter which the
18 COMELEC may require them to perform.

19 SEC. 3. The COMELEC shall promulgate the provisions of the preceding
20 sections.

21 ARTICLE XIII

22 PENAL AND CIVIL SANCTIONS

23 SECTION 1. Any public or peace officer who violates Sections 4 and 6 of
24 Article III and Section 1 of Article VII of this Act by actually employing force or
25 violence, whether physical or psychological, upon the person or honor of the
26 person arrested or detained shall suffer the following penalties, aside from
27 dismissal from office, perpetual disqualification to hold any public position and
28 forfeiture of all benefits, without prejudice to whatever liabilities:

a) **First Offense.** – An imprisonment of two (2) years and one (1) day to four (4) years and a fine of ten thousand pesos (P10,000.00).

SEC. 2. Any public or peace officer or employee or anyone acting upon the orders of such officer or employee or in his place, who directly indirectly violates Section 1 of Article XI of this Act shall suffer the penalty of imprisonment of not less than five (5) years but not more than eight (8) years or a fine of fifty thousand pesos (P50,000.00) or both.

SEC. 3. Any other violation of the mandatory provisions of this Act shall be punished by an imprisonment of not less than four (4) years but not more than six (6) years or a fine of fifty thousand pesos (P50,000.00), or both imprisonment and fine.

SEC. 4. Any person who violates any provision of this Act shall be adjudged to pay actual, moral and exemplary damages and attorney's fees authorized under the Revised Penal Code, the Civil Code and other applicable laws.

ARTICLE XIV

FINAL PROVISIONS

SECTION 1. The Department of Justice, the Bureau of Jail Management and Penology, the Commission on Human Rights, the Department of Health, the Department of Education, a representative each from the Committees on Human Rights of both chamber of Congress and other related agencies of the government shall promulgate such rules and regulations to effectively implement the provisions of this Act.

1 SEC. 2. All persons charged, facing trial, or under investigation for the
2 commission of a crime or under detention or serving sentence by reason thereof
3 shall continue to be entitled to all rights and privileges granted them under
4 Republic Act No. 7438, the Revised Rules of Court and other pertinent laws
5 insofar as they are not in conflict with this Act.

6 SEC. 3. In the event that any provision of this Act declared
7 unconstitutional, all other provisions or portions hereof not affected by such
8 declaration shall remain valid and effective.

9 SEC. 4. This Act shall take effect fifteen (15) days after its publication in
10 the Official Gazette or in a newspaper of general circulation.

11 Approved,