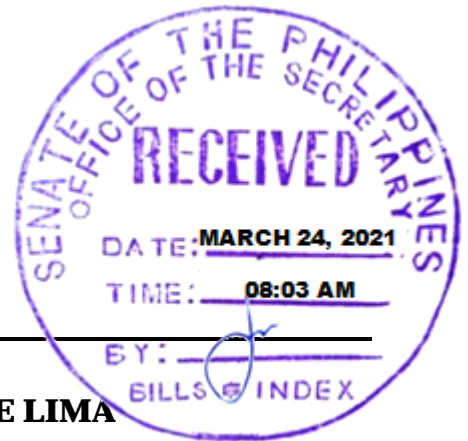


SENATE

P.S. Res. No. 688



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Introduced by **SENATOR LEILA M. DE LIMA**

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**RESOLUTION**

**URGING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE RECENT MISENCOUNTER BETWEEN THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA) AND THE PHILIPPINE NATIONAL POLICE'S DANGEROUS DRUG ENFORCEMENT UNIT (DDEU) WHICH RESULTED IN A BLOODY SHOOTOUT, ON THE LEGITIMACY OF SUCH OPERATION, AS WELL AS THE LEGAL BASES UPON WHICH OUR ANTI-DRUG LAW ENFORCERS OPERATE, WITH THE END VIEW OF DETERMINING COMPLIANCE WITH, AND REFORMING CERTAIN LAW ENFORCEMENT PROCEDURES AND STANDARD PROTOCOLS TO AVERT SUCH INCIDENTS IN THE FUTURE**

1           WHEREAS, Article II, Section 4 of the Constitution states in part that “[t]he  
2 prime duty of the Government is to serve and protect the people”;

3           WHEREAS, Article II, Section 11 of the same declares that “[t]he State values  
4 the dignity of every human person and guarantees full respect for human rights”;

5           WHEREAS, the Supreme Court in *People v. Danisco*,<sup>1</sup> elucidated that  
6 “[i]nstigation means luring the accused into a crime that he, otherwise, had no  
7 intention to commit, in order to prosecute him. On the other hand, entrapment is the  
8 employment of ways and means in order to trap or capture a lawbreaker. Instigation  
9 presupposes that the criminal intent to commit an offense originated from the  
10 inducer and not the accused who had no intention to commit the crime and would  
11 not have committed it were it not for the initiatives by the inducer. In entrapment,  
12 the criminal intent or design to commit the offense charged originates in the mind of  
13 the accused; the law enforcement officials merely facilitate the apprehension of the

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<sup>1</sup> G.R. No. 178060 (23 February 2011)

1 criminal by employing ruses and schemes. In instigation, the law enforcers act as  
2 active co-principals”;

3 WHEREAS, on 24 February 2021, a bloody shootout ensued between the  
4 members of the Philippine Drug Enforcement Agency (PDEA) and the Philippine  
5 National Police’s (PNP) Dangerous Drugs Enforcement Unit (DDEU) following a  
6 botched “buy-bust” operation. Among the five (5) casualties from the misencounter  
7 are two (2) members of the PNP and one (1) PDEA agent.<sup>2</sup> According to the initial  
8 report from the Batasan police station, the operation was conducted at around 5:45  
9 PM at the parking lot of a fast-food chain beside a popular mall. It said that the PNP  
10 personnel involved, without their knowledge, transacted and engaged with  
11 undercover PDEA agents. They also claimed that the PDEA agents were the first to  
12 fire;<sup>3</sup>

13 WHEREAS, while PDEA Spokesperson Derrick Carreon insisted that even if  
14 the other details are not yet clear, the PDEA operatives conducted a legitimate “buy-  
15 bust” operation and had proper documents to back up the legitimacy of their  
16 operation,<sup>4</sup> National Capital Region Police Office (NCRPO) chief Major General  
17 Vicente Danao, Jr. said that one of the law enforcement teams could have done the  
18 illegal practice of “sell-bust” – where instead of law enforcers bringing money to  
19 purchase drugs from dealers, they pose as sellers and bring drugs to operations to  
20 capture buyers;<sup>5</sup>

21 WHEREAS, NCRPO Chief. Maj. Gen. Danao, Jr. maintained that a “sell-bust”  
22 operation is not allowed since all cases that are instigated, especially if they are drugs-  
23 related, are illegal;<sup>6</sup>

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<sup>2</sup> Dimatulac, C. (28 February 2021) *Death toll in PNP-PDEA shootout rises to 5*. Retrieved 18 March 2021, from: <https://www.cnn.ph/news/2021/2/28/pnp-pdea-shootout-death-toll.html>

<sup>3</sup> Talabong, R. (24 February 2021) *At least 2 dead after PNP, PDEA shoot at each other in bungled 'buy-bust operation'*. Retrieved 18 March 2021, from: <https://www.rappler.com/nation/pnp-pdea-shootout-bungled-buy-bust-operation-ever-gotesco-quezon-city>

<sup>4</sup> Garcia, M. (24 February 2021) *PDEA conducting legit buy-bust when Commonwealth shootout happened – spokesman*. Retrieved 18 March 2021, from: <https://www.gmanetwork.com/news/news/metro/777312/pdea-insists-buy-bust-legit-in-commonwealth-shootout/story/>

<sup>5</sup> Talabong, R. (25 February 2021). *NCRPO: 'Sell-bust' may have caused PNP, PDEA shootout*. Retrieved 19 March 2021, from: <https://www.rappler.com/nation/ncrpo-says-sell-bust-may-have-caused-pnp-pdea-shootout-quezon-city>

<sup>6</sup> Pedrajas, J. (25 February 2021) *Did the police or PDEA commit 'sell-bust'? Authorities investigate*. Retrieved 19 March 2021, from: <https://mb.com.ph/2021/02/25/did-the-police-or-pdea-commit-sell-bust-authorities-investigate/>

1           WHEREAS, in *People v. Bartolome*,<sup>7</sup> it has already been established that “[w]  
2 hile entrapment is legal, instigation is not”;

3           WHEREAS, in an interview, PDEA chief (Ret.) Gen. Dionisio Santiago said  
4 that while “sell-bust” operations are not legal, some anti-narcotics agents “sometimes  
5 did it.” He admitted that there are anomalous sell-bust operations where drug targets  
6 are driven into a trap so they can be arrested;<sup>8</sup>

7           WHEREAS, this bloody skirmish between the two primary narcotics law  
8 enforcement agencies of the government, which resulted in a traumatic experience  
9 for those who were caught between the gunfire and those who witnessed videos of  
10 the incident, occurred on the same day that Department of Justice Secretary  
11 Menardo Guevarra addressed the United Nations Human Rights Council (UNHRC).  
12 Sec. Guevarra revealed that more than half of the thousands of anti-drug operations  
13 launched by the police under the Duterte administration failed to comply with the  
14 rules of engagement and protocol. His report likewise noted that, “in more than half  
15 of the records reviewed, the law enforcement agents involved failed to follow  
16 standard protocols pertaining to coordination with other agencies and the processing  
17 of the crime scene”;<sup>9</sup>

18           WHEREAS, Section 86 of Republic Act No. 9165, otherwise known as the  
19 ‘Comprehensive Dangerous Drugs Act of 2002’, requires the NBI, PNP and the  
20 Bureau of Customs to maintain close coordination with the PDEA on all drug related  
21 matters;

22           WHEREAS, under Rule 37.2 of the Revised Philippine National Police  
23 Operational Procedures on Coordination Requirements, prior to any anti-drug  
24 operations, PNP units are mandated, as far as practicable, to coordinate with the  
25 PDEA;<sup>10</sup>

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<sup>7</sup> G.R. No 191726 (06 February 2013)

<sup>8</sup> *Ibid.*

<sup>9</sup> Ramos, M. (24 February 2021) *Guevarra: Irregularities seen in more than half of anti-drug police operations*. Retrieved 19 March 2021, from: <https://newsinfo.inquirer.net/1399842/guevarra-irregularities-seen-in-more-than-half-of-6000-anti-drug-police-operations>

<sup>10</sup> Philippine National Police. (December 2013) *Revised Philippine National Police Operational Procedures*. Retrieved 19 March 2021, from: [http://www.pnp.gov.ph/images/transparency\\_seal/2016/manuals/PNPOperationsManual.pdf](http://www.pnp.gov.ph/images/transparency_seal/2016/manuals/PNPOperationsManual.pdf)

1           WHEREAS, a similar rule on coordination with the PDEA can also be found in  
2 the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation<sup>11</sup>;

3           WHEREAS, under the aforementioned manual, a poseur buyer in a “buy-bust”  
4 operation is defined as an “undercover Police Officer who acts as a buyer of illegal  
5 drugs for purposes of effecting the arrest of the offender”;<sup>12</sup>

6           WHEREAS, despite such requirement, however, it was later revealed by  
7 National Bureau of Investigation (NBI) Deputy Director Ferdinand Lavin that the  
8 female asset used by the Quezon City Police District (QCPD) in the operation should  
9 have actually been in jail. He identified QCPD’s asset as Jonaire Decena who had  
10 been arrested in a drug buy-bust operation in January. Her participation further  
11 taints the already confusing encounter between the PDEA and the PNP. Apparently,  
12 it was with Decena that PDEA’s asset Untong Matalnas transacted before the  
13 misencounter escalated into a fatal gunfire. Matalnas was one of the casualties and  
14 his death is of special interest as CCTV footage seemed to show that several men,  
15 believed to members of the PNP, took him into custody;<sup>13</sup>

16           WHEREAS, documents submitted to the NBI would disclose that prior to the  
17 operation, Decena had an exchange of text messages with a drug dealer named  
18 James Tan. According to the lawyer of QCPD, the exchange, as well as the evidence  
19 they have on hand that there is “show money” for the entrapment, prove the  
20 legitimacy of the operation conducted by the PNP;<sup>14</sup>

21           WHEREAS, in explaining the involvement of Decena in the operation, same  
22 QCPD lawyer said that the use of such inmate is justified under Article 11 of the  
23 Revised Penal Code. Considering the restrictions of the pandemic these days, they  
24 said that it is very difficult to secure a court order, and postulated that Article 11  
25 allows such use because “*puwede kang gumawa ng harm kung ang pakay mo doon*  
26 *ay iwasan ang mas malaking harm...*” QCPD likewise denied that the involvement

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<sup>11</sup> Philippine National Police. (September 2014) *Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation*. Retrieved 19 March 2021, from: <https://pro9.pnp.gov.ph/index.php/downloads/send/5-pnp-manuals/278-revised-pnp-anti-drugs-manual>

<sup>12</sup> *Ibid.* Chapter 3, 3.1 a. 9) (c).

<sup>13</sup> Murcia, A. (10 March 2021) *NBI: QCPD asset a jailbird*. Retrieved 19 March 2021, from: <https://tribune.net.ph/index.php/2021/03/10/nbi-qcpd-asset-a-jailbird/>

<sup>14</sup> *Ibid.*

1 of Decena is an instance of “*Palit-ulo*” wherein operatives use arrested suspects to  
2 help in arresting other suspects in exchange for their freedom;<sup>15</sup>

3 WHEREAS, Article 11, paragraph 4 of the Revised Penal Code (RPC), on the  
4 justifying circumstance of avoidance of greater evil or injury, however, requires that  
5 there be no other practical and less harmful means of preventing the evil or injury.  
6 The explanation of the QCPD that the difficulty of securing a court order has justified  
7 their use of an inmate for their operations, evidently shows that this requirement is  
8 wanting;

9 WHEREAS, the use of the QCPD of Article 11 (4) of the RPC betrays a possible  
10 misuse of this law to commit criminal acts supposedly under the justification of  
11 greater good. Thus, there is need to determine how often our law enforcement units  
12 actually commit crime thinking that they are justified under this provision;

13 WHEREAS, it is imperative to determine the legitimacy of the operations of  
14 law enforcement agencies that resulted in deaths of officers and civilians, as well as  
15 the legality of utilizing inmates in the operations of law enforcement agents and  
16 officers which poses a number of serious risks both to the public and the success of  
17 legitimate law enforcement operations;

18 WHEREAS, with no less than the Justice Secretary admitting before the  
19 UNHRC that more than half of the anti-drug operations conducted by law  
20 enforcement agencies failed to follow protocol, it is important to determine whether  
21 the issue of compliance of both the PNP and the PDEA in the established rules  
22 concerning anti-drug operations, could have been the cause of the bloody  
23 misencounter on the 24<sup>th</sup> of February that claimed the lives of five (5) individuals;

24 WHEREAS, it is imperative for the Senate to determine necessary policy  
25 reforms or come up with remedial legislation on certain law enforcement procedures  
26 and standard protocols to prevent further misencounters among agents of  
27 government and other incidents with the same nature in the future as well as  
28 improve the legal mechanisms for the accountability of state actors and strengthen  
29 the mandate and responsibilities of relevant government agencies involved in such  
30 legitimate operations;

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<sup>15</sup> Bua, N. (17 March 2021). *QCPD nagpaliwanag sa paggamit ng preso sa drug ops na nauwi sa PDEA ‘mis-encounter’*. Retrieved 19 March 2021, from: <https://news.abs-cbn.com/news/03/17/21/qcpd-nagpaliwanag-sa-paggamit-ng-pres-so-sa-drug-ops-na-nauwi-sa-pdea-mis-encounter>

1           WHEREAS, law enforcement agencies must be reminded that they are bound  
2 by the established rules and guidelines on “buy-bust” operations. Any reported  
3 irregularity in the performance of their duties concerning these operations must be  
4 dealt with to the full extent of the law and that the commission of abuses and  
5 outright crimes during and after such operations by government agents must be held  
6 accountable;

7           NOW, THEREFORE, BE IT RESOLVED BY THE SENATE, to urge the  
8 appropriate Senate Committee to conduct an inquiry, in aid of legislation, on the  
9 recent misencounter between the Philippine Drug Enforcement Agency (PDEA) and  
10 the Philippine National Police’s Dangerous Drug Enforcement Unit (DDEU) which  
11 resulted in a bloody shootout, on the legitimacy of such operation, as well as the legal  
12 bases upon which our anti-drug law enforcers operate, with the end view of  
13 determining compliance with, and reforming certain law enforcement procedures  
14 and standard protocols to avert such incidents in the future.

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Adopted,

  
**LEILA M. DE LIMA**