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Introduced by Senator Antonio "Sonny" F. Trillanes IV

EXPLANATORY NOTE

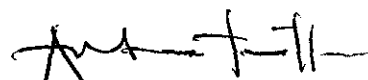
Matters about the arrest of persons have been regulated by procedural rules, despite its consequences being substantive in character. Arrest inevitably encroaches on the constitutional rights of the person arrested, and affects not only his person but also his family.

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.



ANTONIO "SONNY" F. TRILLANES IV
Senator

1 commission of the offense and arrest is nine (9) years old or over but under eighteen (18)
2 years of age , although emancipated in accordance with law.

3

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

7

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

19

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

22 a) of any person who is attempting to commit a crime or actually committing a
23 crime or has committed a crime in his presence or within his perception; or

24 b) when he has knowledge of the commission of a crime whereof probable cause
25 exists that the person to be arrested is the one who committed the crime;

26 c) or when the person to be arrested is known to the person making the arrest to
27 be a fugitive from justice or an escapee from a penal establishment or place of

1 confinement where he is serving sentence or being held while his case is pending, or has
2 escaped while being transferred from one confinement to another.

3

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

8

9 ***SEC.5. Duties of arresting officer or person*** – In making the arrest, the peace
10 officer or private person shall act accordingly as follows:

11a) When the arrest is by virtue of a warrant, the officer making the arrest shall inform the
12 person to be arrested of the cause of the arrest and the fact that a warrant has been issued
13 for his arrest. The officer need not have the warrant in his possession at the time of the
14 arrest, the warrant shall be shown to the person arrested as soon as possible.

15b) When the arrest is without a warrant but by a peace officer, he shall inform the person to
16 be arrested of his authority and the cause of the arrest, except when the latter is about to
17 commit or is committing a crime or is being pursued immediately after its commission, or
18 when the giving of such information will frustrate the arrest. If the arrest is by a private
19 person, he should inform the person to be arrested of his intention to arrest him and the
20 cause of the arrest, except when the same circumstances aforestated attend the arrest.

21c) When the arrest is made by a peace officer, the person arrested shall forthwith be
22 immediately informed, in a language known to and understood by him, that he has the
23 right to remain silent; that any statement he may make or give may be used against him;
24 that he has the right to be assisted by counsel of his choice and if he could not afford to
25 engage the services of counsel, the Government shall provide him with one. Beyond
26 these, the rights accorded by Republic Act No.7438 to an arrested or detained person, in

1 so far as not inconsistent with the provision of this Act, shall be observed and complied
2 with.

3 d) No violence nor force beyond what is necessary to place the **person to be arrested**
4 under restraint, shall be employed in making the arrest.

5 e) When the person to be arrested is a youthful offender, the officer or private person
6 making the arrest shall observe and comply with pertinent rules of law governing such
7 offender. If the youthful offender is below fifteen (15) years of age, he shall be released
8 in recognizance within twenty-four (24) hours after arrest to the custody of his parents or
9 of the Department of Social Welfare and Development who shall be charged with his
10 custody.

11 f) In offenses against decency, any photograph or picture taken of the offender or
12 offenders on the occasion of the commission of the offense shall be strictly confidential
13 and shall not be made public nor in any manner to be disseminated. Such photograph or
14 picture shall be sealed in an envelope or package, accompanied by an affidavit of the
15 person who took or made the same, stating, *inter alia*, the date, time and place it was
16 taken, the number of copies made thereof and certifying that no copies made thereof have
17 been made other than those in sealed envelope or package.

18

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

24 The admissibility in evidence of articles seized from the person arrested,
25 confirmatory of the commission of an offense, shall not be affected by a judicial
26 declaration of illegality or invalidity of the arrest, except when the evidence is shown to
27 be merely “planted” to incriminate the person arrested. The illegality or invalidity of the

1 arrest shall render the public officer or private person responsible thereof criminally,
2 civilly and/or administratively liable as the case may be.

3

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

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

18 **SEC. 8. *Separability Clause*** -- Should any part or provision of this Act be
19 declared invalid or unconstitutional, none of the other parts or provisions hereof shall be
20 affected thereby.

21

22 **SEC. 9. *Repealing Clause*** -- All laws, executive orders, decreed, instructions,
23 rules and regulations contrary to, or inconsistent with any provision of this Act are hereby
24 repealed or modified accordingly.

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

Approved,