

SENATE

'19 JUL -2 P1:32

S. No. 182

RECEIVED



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

**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**

EXPLANATORY NOTE

"Justice delayed is justice denied."

The Constitution mandates that all persons shall have the right to a speedy disposition of their cases. This ensures that parties, particularly the accused in criminal prosecutions, are protected from unnecessary delays.

However, the current state of criminal investigation in the country is very alarming. It has turned out to be slow and ineffective in prosecuting criminal cases and securing convictions in court. Thus, there is a need to overhaul the system to effectively address chronic delays and systemic inefficiency in litigating crimes.

This measure aims to streamline and strengthen the process of criminal investigation that will expedite and improve the administration of the criminal justice system in the country.

Under this proposal, criminal investigation shall be composed of two stages.

First, the investigation stage where the investigating law enforcement officer and the investigating prosecutor shall work hand-in-hand. In actively participating in case build-up, both the police and the prosecutor can combine their forensic and legal expertise to come up with a solid case that will withstand the rigors of trial. Furthermore, the fusion of functions will make the handling of evidence during the

investigation stage more systematic. Thereafter, the investigating prosecutor, based on the complaint and/or the result of the criminal investigation which they themselves led and supervised, shall determine, without need of additional adversarial proceedings, whether there is a *prima facie* case to elevate the case to court.

Second, the preliminary hearing stage where the trial judge evaluates the evidence of both parties and resolves all other pre-trial incidents in one proceeding, and during the end of which a determination shall be made using the standard of *preponderance of evidence* whether a full-blown criminal trial is warranted.

The introduction of an investigating prosecutor will provide our law enforcement the sufficient legal guidance that would give the necessary direction in gathering and preserving the correct evidence necessary to secure conviction, as well as afford our prosecution service with the opportunity to dispose of the cases at the earliest possible opportunity by granting them access to as much information on the case at an early stage.

This bill will enhance our prosecution and justice system and ensure a speedier and more effective administration of justice. It is submitted that the improvements that this bill will introduce in our justice system that will serve as the centerpiece of a more just and efficient campaign against criminality.

This measure was originally filed during the 16th Congress.


LEILA M. DE LIMA



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

1 Section 1. *Short Title.* – This Act shall be known as the “*Criminal Investigation*
2 *Act of 2019*”.

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

9 Sec. 3. *Definition of Terms.* – As used in this Act:

10 (a) *Criminal Investigation System* - refers to the entire process of investigating
11 the commission of a crime and determining whether there is sufficient cause
12 to file a criminal case in court and hold a respondent for trial. It is composed
13 of two (2) stages: the criminal investigation stage and the preliminary
14 hearing stage.

15 (b) *Criminal investigation* - refers to the fact-finding inquiry conducted by law
16 enforcement officers, under the direction of the investigating prosecutor,

1 where evidence is gathered, with a view to determining whether a crime has
2 been committed and whether a criminal information should be filed in court.

3 (c) *Investigating prosecutor* - refers to the Prosecutor General, Regional
4 Prosecutors, State Prosecutors, Provincial Prosecutors, City Prosecutors and
5 their respective Deputies and Assistants and Prosecution Attorneys who
6 have the authority to prosecute crimes within their respective jurisdictions.
7 It shall also refer to the Ombudsman, the Special Prosecutor, their Deputies
8 and Assistants, Graft Investigation and Prosecution Officers and Special
9 Prosecutors, in cases falling under the jurisdiction of the Office of the
10 Ombudsman.

11 (d) *Law enforcement officer* - refers to officers and agents of the Philippine
12 National Police, National Bureau of Investigation, Philippine Drug
13 Enforcement Agency, Bureau of Immigration, Bureau of Customs, Anti-
14 Money Laundering Council, Securities and Exchange Commission, Bureau
15 of Internal Revenue, Philippine Coast Guard and other agencies which have
16 the legal authority to enforce laws or investigate the commission of crimes.

17 (e) *Preliminary hearing* - refers to the proceedings conducted before the trial
18 judge after a criminal information has been filed in court, during which the
19 complainant and the respondent present their respective evidence to
20 establish whether the case should proceed to a full-blown criminal trial.

21 (f) *Trial judge* - refers to the judge in whose court a criminal information is
22 filed after the conclusion of the criminal investigation. The trial judge will
23 conduct the preliminary hearing and thereafter decide whether the case will
24 be dismissed or will proceed to trial.

25 (g) *Prima facie evidence* - refers to evidence which, if unexplained or
26 uncontradicted, is sufficient to sustain the proposition it supports or to
27 establish the facts.

28 (h) *Preponderance of evidence* - refers to the standard of proof where the
29 evidence of one side is deemed by the court to be more convincing, of more
30 probative weight, and more worthy of belief, than that which was offered in
31 opposition to it.

32 (i) *Proof beyond reasonable doubt* - refers to the standard of proof which
33 produces moral certainty or that which produces conviction in an
34 unprejudiced mind.

1 Sec. 4. *Criminal Investigation System; Principles.* – The Criminal
2 Investigation System shall be governed by the following principles:

- 3 (a) The Criminal Investigation System shall be conducted in a speedy, effective,
4 efficient and economical manner, with a view to facilitating the resolution of
5 criminal cases, should they eventually reach the courts, through the
6 systematic and proper gathering of evidence and forensic data, and accurate
7 determination of perpetrators and their respective liabilities.
- 8 (b) The Criminal Investigation System shall be composed of the criminal
9 investigation stage and the preliminary hearing stage. During both stages,
10 the primary aim of the investigating prosecutor and the trial judge is to
11 determine whether there is sufficient evidence establishing the commission
12 of a crime and linking the respondent to its commission, enough to justify
13 the conduct of a full-blown criminal trial.
- 14 (c) All criminal investigations shall be under the direct control and supervision
15 of an investigating prosecutor. Law enforcement officers shall take guidance
16 from and cooperate closely with the investigating prosecutor in the process
17 of conducting criminal investigations, especially in matters concerning
18 compliance with laws and rules of procedure, evidence-gathering and case
19 build-up and preparation.
- 20 (d) Upon the conclusion of a criminal investigation, the investigating
21 prosecutor shall determine whether there is *prima facie* evidence that a
22 crime has been committed, of which the respondent is probably guilty and
23 should consequently stand trial. The investigating prosecutor, in making
24 such a determination, shall rely on the substance of the complaint or report,
25 and the evidence gathered during the criminal investigation stage. The
26 conduct of a criminal investigation is an executive function; it is neither
27 judicial nor quasi-judicial and is not adversarial in nature.
- 28 (e) Upon the filing of a criminal information, the trial judge whose court it was
29 raffled shall conduct a preliminary hearing and exert all effort to determine,
30 by preponderance of evidence, whether there is sufficient cause for the
31 respondent to stand trial. All remedies available to either parties at the
32 preliminary hearing stage may be availed of, but the trial judge should not
33 grant the same in a manner that would result in unnecessary delays.

1 (f) All preliminary hearings shall be adversarial in nature, with the trial judge
2 relying on the submissions, arguments and counterarguments of the
3 complainant and the respondent to arrive at a decision. However, the trial
4 judge may be allowed to take an active part in the process and direct the
5 course of the preliminary hearing by employing inquisitorial measures such
6 as ordering the oral examination of witnesses or the production of additional
7 evidence, if the same will aid in the weighing of the merits of both parties'
8 evidence.

9 (g) Except when there is a clear showing of grave abuse of discretion amounting
10 to lack or excess of jurisdiction, the Criminal Investigation System, at any
11 stage, shall not be restrained or enjoined by any court.

12 Sec. 5. *Criminal Investigation; Initiation.* – A criminal investigation may be
13 initiated through the following modes:

14 (a) *Upon a report received by a law enforcement agency* – a law enforcement
15 agency may receive reports of a crime from private individuals and
16 intelligence assets, or referrals/recommendations from other government
17 agencies. In such cases, the law enforcement agency shall immediately
18 coordinate with an investigating prosecutor to determine the course of the
19 criminal investigation.

20 (b) *Upon the instance of an investigating prosecutor* – an investigating
21 prosecutor may initiate a criminal investigation in the following instances:
22 (1) when a report or recommendation has been received regarding the
23 commission of a crime, and (2) when such investigating prosecutor initiates
24 an investigation to gather evidence on high incident crimes and other
25 identified priority crimes. In such cases, the conduct and direction of the
26 criminal investigation shall be determined by the investigating prosecutor,
27 with the assistance of law enforcement officers.

28 (c) *Upon the instance of an aggrieved party who files a criminal complaint* –
29 an aggrieved party may formally file a criminal complaint in the prosecution
30 office, accusing another person/s of committing a crime. In such cases, the
31 conduct and direction of the criminal investigation shall be determined by
32 the investigating prosecutor, with the assistance of law enforcement officers.

33 Sec. 6. *Criminal Investigation; Procedure.* –

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

- 5 1. All reports of a crime received by a law enforcement officer shall
6 immediately be communicated to an investigating prosecutor, who
7 shall lead the criminal investigation and direct its course, with the full
8 cooperation and assistance of law enforcement officers concerned.
- 9 2. If a report is received by an investigating prosecutor from any other
10 office or agency, or if the investigating prosecutor initiates the
11 investigation to gather evidence on high incident crimes and other
12 identified priority crimes, coordination with the appropriate law
13 enforcement agency shall be immediately established in order to
14 commence the criminal investigation.

15 (b) In cases where a criminal complaint is filed and the criminal investigation
16 commences upon the instance of a private offended party, as provided in
17 Section 5 (c) of this Act, the following rules shall apply:

- 18 1. The investigating prosecutor taking cognizance of a criminal
19 complaint shall ensure that the same contains:
 - 20 a. A statement of facts constituting the crime;
 - 21 b. An allegation of the commission of a crime, with reference to the
22 law/s allegedly violated;
 - 23 c. The names of persons being accused, and their addresses;
 - 24 d. The affidavits of witnesses;
 - 25 e. Supporting documents and other evidence relevant to the crime;
 - 26 f. The signature of the complainant; and
 - 27 g. The complainant's certification of non-forum shopping.
- 28 2. The complaint shall be sworn to by the complainant before the
29 investigating prosecutor, who shall certify that the same represents
30 the complainant's voluntary act and was fully understood by the
31 complainant.
- 32 3. The investigating prosecutor shall immediately coordinate with the
33 appropriate law enforcement agency to enlist law enforcement
34 officers who shall participate in the criminal investigation. The

1 investigating prosecutor shall lead the criminal investigation and
2 direct its course, with the full cooperation and assistance of law
3 enforcement officers concerned.

4 (c) The investigating prosecutor, as far as practicable, shall immediately
5 proceed to the scene of the crime in order to supervise the investigation and
6 ensure the compliance of all evidence-gathering techniques with applicable
7 laws and rules, including rules on chain of custody over evidence.

8 (d) The investigating prosecutor shall determine whether the criminal
9 investigation should be terminated. Upon its termination, the law
10 enforcement officers concerned shall submit a case file containing all
11 relevant statements of fact, inventory of evidence, affidavits, background
12 information of persons connected with the criminal investigation, and other
13 relevant facts to aid in the investigating prosecutor's determination of a
14 *prima facie* case.

15 (e) Within thirty (30) days, the investigating prosecutor shall determine, based
16 on the case file, whether there is a *prima facie* evidence that a crime has
17 been committed, warranting the filing of a criminal information against the
18 person or persons criminally responsible.

19 (f) The findings of the investigating prosecutor shall be contained in a Criminal
20 Investigation Report. A Criminal Investigation Report finding the existence
21 of a *prima facie* evidence of a crime shall include a criminal information
22 naming the person or persons to be accused and their respective crimes.

23 (g) The Criminal Investigation Report of an investigating prosecutor shall be
24 approved or disapproved by the Head of the Prosecution Office concerned.
25 In case the Criminal Investigation Report is disapproved, the Head of the
26 Prosecution Office may reverse the findings of the Investigating Prosecutor
27 and (1) proceed to dismiss the case, or (2) direct the filing of the criminal
28 information in court, without need of further reinvestigation. The final
29 decision of approval or disapproval by the head of the prosecution office
30 shall be embodied in a Resolution.

31 (h) If a criminal investigation results in the dismissal of the case, the aggrieved
32 party may seek reconsideration within five (5) days from the promulgation
33 of the Resolution. No further appeals shall be available.

1 (i) If a criminal investigation results in the finding of *prima facie* evidence, the
2 criminal information/s will be filed in court no later than five (5) days from
3 the promulgation of the Resolution.

4 Sec. 7. *Powers of the Investigating Prosecutor during the Criminal*
5 *Investigation.* – The investigating prosecutor shall exercise the following powers
6 during the criminal investigation:

- 7 1. Initiate, manage and supervise all incidents of the criminal
8 investigation, in coordination with concerned law enforcement
9 officers;
- 10 2. Perform all acts necessary to ensure the integrity of the criminal
11 investigation process and its compliance with relevant laws and rules;
- 12 3. Take custody of and preserve all relevant evidence and ensure the
13 integrity of the chain of custody over evidence at all stages of the
14 criminal investigation;
- 15 4. Supervise intelligence-gathering, surveillance and other methods of
16 investigation in relation to the crime;
- 17 5. Issue subpoenae *ad testificandum* and *duces tecum* to witnesses
18 whose testimonies may be relevant to the investigation and to
19 persons in custody of object evidence, including footages from
20 closed-circuit television cameras (CCTV) and other video recording
21 devices;
- 22 6. Direct the appropriate law enforcement agencies to locate missing
23 witnesses or persons of interest, in relation to the criminal
24 investigation;
- 25 7. Recommend the admission into the witness protection program,
26 pursuant to existing laws, of any person who has witnessed or has
27 knowledge or information on the commission of a crime in relation
28 to the criminal investigation;
- 29 8. Apply for warrants of arrest, search and seizure and such other
30 processes as may be necessary in the course of the criminal
31 investigation; and

- 1 9. Direct law enforcement officers to submit inventories, reports,
2 findings and other documents in connection with the criminal
3 investigation.

4 *Sec. 8. Powers of the Law Enforcement Officers During the Criminal*
5 *Investigation.* – Law Enforcement officers shall exercise the following powers during
6 the Criminal Investigation:

- 7 1. Conduct investigations, surveillance, intelligence-gathering, forensic
8 examinations and other criminal investigative techniques under the
9 authority of the investigating prosecutor and pursuant to the
10 criminal investigation plan;
11 2. Recommend to the investigating prosecutor the application for
12 warrants of arrest, search and seizure in the course of the criminal
13 investigation;
14 3. Request for guidance and counsel from the investigating prosecutor,
15 especially on points of law and legal procedure;
16 4. Serve warrants of arrest, search and seizure as issued by the proper
17 courts;
18 5. Locate and secure witnesses and procure their sworn statements in
19 connection with the crime being investigated;
20 6. Locate and secure object evidence related to the criminal
21 investigation, and turn over the same to the investigating prosecutor
22 consistent with chain custody of rules; and
23 7. Prepare and sign reports, inventories and other papers necessary for
24 the documentation of the criminal investigation. The same shall not
25 be released to any third party except with the written clearance of the
26 investigating prosecutor.

27 *Sec. 9. Preliminary Hearing; General Rules.* – The following general rules shall
28 apply to all preliminary hearings:

- 29 (a) No motion for reinvestigation shall be entertained at the stage of the
30 preliminary hearing, except on the ground of newly discovered evidence.
31 (b) During the preliminary hearing, the trial judge shall have the power to issue
32 compulsory processes, resolve preliminary legal issues that will not

1 prejudice the case, and issue Hold Departure Orders, Temporary
2 Restraining Orders, Freeze Orders and other ancillary remedies.

3 (c) The preliminary hearing shall be summary in nature and shall rely primarily
4 on the written submissions, arguments and counter arguments of the
5 parties, unless the trial judge, upon motion of either party or *motu proprio*,
6 decides to take an active part in the proceedings employing inquisitorial
7 measures such as ordering the oral examination of any of the parties or
8 witnesses, or the production of additional evidence, in order to clarify
9 contentious matters.

10 (d) Except for meritorious circumstances, preliminary hearings shall be
11 concluded with a maximum of three (3) trial settings, but in no case longer
12 than fifteen (15) days.

13 Sec. 10. *Preliminary Hearing; Procedure.* – Upon the filing of the criminal
14 information in the proper court, the following procedure shall apply:

15 (a) The criminal information shall be raffled to a trial judge, who shall promptly
16 issue a subpoena to the complainant and the respondent, ordering them to
17 appear in court for the preliminary hearing of the case. The respondent,
18 together with the subpoena, shall be furnished a copy of the criminal
19 information, criminal complaint and its supporting documents (in cases
20 where a criminal complaint was filed), the Criminal Investigation Report
21 and the Resolution.

22 (b) The complainant shall be represented by the investigating prosecutor, who
23 shall present the case of the complainant to the trial judge with reference to
24 the criminal complaint and its supporting documents (in cases where a
25 criminal complaint was filed), the Criminal Investigation Report, the
26 Resolution and such other relevant documents as may assist the trial judge.

27 (c) The respondent shall be represented by counsel and given the opportunity
28 to interpose a defense. The respondent shall file a Reply which shall contain
29 all the substance of the defense, together with the affidavits of witnesses and
30 such other supporting documents as may be necessary to establish the case.

31 (d) If a subpoena is returned or unserved or if, despite due notice, the
32 respondent fails to appear in court, the trial judge shall issue an order of
33 default and proceed with the preliminary hearing *ex parte*, receiving only

1 the evidence adduced by the prosecution. However, even in *ex parte*
2 preliminary hearings, the trial judge may *motu proprio* order the prosecution
3 to present witnesses for oral examination by the trial judge or produce
4 additional documentary evidence to aid the trial judge's determination.

5 (e) Upon termination of the preliminary hearing, the trial judge shall have five
6 (5) days to determine, using the standard of preponderance of evidence,
7 whether there is sufficient cause for the respondent to stand trial. If no such
8 sufficient cause is found, the case shall be dismissed. Otherwise, the trial
9 judge shall order that the case proceed to trial, and issue a warrant of arrest
10 against the respondent, if proper.

11 (f) Either party may request reconsideration of the decision of the trial judge
12 within five (5) days from its promulgation. No further appeals shall be
13 available.

14 Sec. 11. *Implementing Rules and Regulations.* – Within sixty (60) days from
15 the promulgation of this Act, an inter-agency committee composed of the Supreme
16 Court, Department of Justice and law enforcement agencies shall issue implementing
17 rules and regulations to govern the implementation of this Act.

18 Sec. 12. *Separability Clause.* – If any provision of this Act is declared
19 unconstitutional or invalid, other parts or provisions hereof not affected shall continue
20 to be in full force and effect.

21 Sec. 13. *Repealing Clause.* – Republic Act No. 5180, Presidential Decree No. 77
22 and Presidential Decree No. 911 are hereby repealed. All laws, executive orders,
23 presidential decrees, presidential proclamations, letters of instruction, rules and
24 regulations or parts thereof which are inconsistent with the provisions of this Act are
25 hereby repealed or modified accordingly.

26 Sec. 14. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following
27 its publication in the Official Gazette or in two (2) newspapers of general circulation
28 in the Philippines.

Approved,