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SENATE

S. No. 1306

RECEIVED BY: 

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

**AN ACT
REDEFINING THE MANDATE OF THE PUBLIC ATTORNEY'S OFFICE
(PAO), AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9046 AND
PERTINENT PROVISIONS OF EXECUTIVE ORDER NO. 292,
OTHERWISE KNOWN AS THE "ADMINISTRATIVE CODE OF 1987", AS
AMENDED, AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

The 1987 Constitution mandates that free access to the courts and adequate legal assistance shall not be denied to any person by reason of poverty.

The present enabling law of the Public Attorney's Office (PAO), Republic Act No. 9406, established PAO as the principal law office of the Government in extending free legal assistance to indigent persons in criminal, civil, labor, administrative, and other quasi-judicial cases – a mandate that is too broad for its personnel complement and resource constraints.

For instance, the 2018 Accomplishment Report of PAO¹ claimed that it had served 13, 344, 003 clients, most of whom are classified as non-judicial services, with each public attorney assisting 6, 366 clients and handling 465 cases.

Furthermore, R.A. No. 9406 allows PAO, in the exigency of the service, to be called upon by proper government authorities to render service to other persons, even if they be non-indigent. This legal authority, as we have seen in recent years, has been invoked to represent individuals who can afford to contract the services of their own private counsels, to the detriment of those who need PAO's services the most: *i.e.*,

¹ Accomplishment Report of the Public Attorney's Office for the Year 2018, p. 7.

those indigent individuals who are threatened to be legally deprived of their liberty or property.

Just recently, PAO Chief Persida Acosta was found in hot waters after questions hounded the PAO forensics laboratory set up by her office following the Dengvaxia controversy. Senator Franklin Drilon said that the PAO forensic laboratory is a waste of money, and a duplication of the forensic laboratories of the police and the National Bureau of Investigation (NBI). “*Ang pera ng bayan ay nalulustay sa isang bagay na puwede namang gampanan ng NBI at PNP (Philippine National Police)*”, remarked Senator Drilon during the September 23, 2019 Senate finance committee's hearing on the 2020 budget of the Department of Justice (DOJ). Stressing on the matter, Senator Drilon said, “I am not sure that your mandate includes investigative work.”²

To arrest this situation, there is an imperative need to revisit the mandate of the PAO. By mandating that its functions shall **primarily** cater to the needs of the indigent clients who are financially incapable of obtaining the services of a lawyer of their choice to defend them in criminal proceedings, public attorneys will be unburdened with other matters and will therefore be able to focus on providing the utmost attention to their clients accused of committing a crime.

The key features of this bill are, as follows:

1. Redefining the mandate of the PAO to primarily serve indigent accused individuals in criminal proceedings;
2. Limiting the services to be extended by PAO to non-indigent persons, in the exigency of the service, to legal assistance and counselling only, not representation;
3. Creating a self-contained Public Defenders Unit within the PAO, which shall exclusively cater to criminal defense in order to avoid situations of conflict of interest when other PAO lawyers extend legal assistance or counselling to the offended party prior to the filing of the case in court;
4. Providing for a term of office for the Chief Public Attorney and for the Judicial and Bar Council to screen and nominate to the President the person best fit for the position;

² Buan, Lian. “*Drilon: PAO forensic lab a duplication, 'waste of money'.*” 23 September 2019. Rappler. Retrieved from: <https://www.rappler.com/nation/240859-drilon-says-pao-forensic-lab-duplication-waste-money>

5. Repealing the support provided by local governments to PAO to ensure its independence and allowing the PAO to recover reasonable payment from persons served but not entitled to its services; and
6. Automatically increasing the number of public attorney positions when a new court or branch is created by law.

As Walton Wood, the first public defender of the United States and former law practitioner in the Philippines once said, “[i]t is not the duty of the public defender to thwart justice or to circumvent the work of the public prosecutor. It is the duty of both officials to work together and with the court with the sole purpose in view of bringing out the facts and of doing absolute and impartial justice. When the government provides only a prosecutor and fails to provide a means of defense it cannot be maintained that the defendant comes into court on an equal footing with his adversary.”³

Early approval of this measure is earnestly sought.


LEILA M. DE LIMA

³ Wood, Walton J. “A Public Defender for the Philippines” . Philippine Law Journal vol. 4, no. 3, p.95.

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PERTINENT PROVISIONS OF EXECUTIVE ORDER NO. 292,
OTHERWISE KNOWN AS THE "ADMINISTRATIVE CODE OF 1987", AS
AMENDED, AND FOR OTHER PURPOSES

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

1 SECTION 1. Section 14-A, Chapter 5, Title III, Book IV of Executive Order No.
2 292, otherwise known as the "Administrative Code of 1987", as amended is hereby
3 further amended to read, as follows:

4 "SEC. 14-A. Powers and Functions. – The PAO shall
5 independently discharge its mandate to **PRIMARILY** render,
6 free of charge, legal representation, assistance, and counselling
7 to indigent persons in criminal **PROCEEDINGS, AND**
8 **SECONDARILY, TO SUCH PERSONS IN** civil, labor,
9 administrative and other quasi-judicial cases."

10 In the exigency of the service **AND WHEN PUBLIC**
11 **INTEREST SO REQUIRES**, the PAO may be called upon by
12 proper government authorities to **PROVIDE LEGAL**
13 **ASSISTANCE AND COUNSELLING** to other persons,
14 subject to existing laws, rules and regulations; **PROVIDED,**
15 **THAT SUCH ASSISTANCE SHALL BE EXTENDED**
16 **ONLY FOR A LIMITED PERIOD AND PURPOSE,**
17 **AFTER WHICH THE CONCERN SHALL BE**

1 FORWARDED TO THE COUNSEL OF CHOICE OF
2 SUCH PERSONS, OR, IN THE ABSENCE THEREOF, TO
3 PRIVATE OR PUBLIC LEGAL AID OR OTHER NON-
4 PROFIT ORGANIZATIONS IN ACCORDANCE WITH
5 REPUBLIC ACT NO. 9999, OTHERWISE KNOWN AS
6 THE “FREE LEGAL ASSISTANCE ACT OF 2010”;
7 PROVIDED FURTHER, THAT NO MORE THAN TEN
8 PERCENT (10%) OF PAO FUNDS AND MANHOURS
9 SHALL BE USED FOR THIS PURPOSE.”

10 Sec. 2. A new subsection is hereby inserted in Section 15, Chapter 5, Title III,
11 Book IV of the same Code, as amended, to read, as follows:

12 “**SEC. 15-A. PUBLIC DEFENDERS UNIT.** – THERE
13 SHALL BE A SELF-CONTAINED PUBLIC DEFENDERS
14 UNIT (PDU) IN ALL PAO DISTRICT OFFICES WHICH
15 SHALL EXCLUSIVELY CATER TO THE LEGAL
16 DEFENSE NEEDS OF ACCUSED PERSONS IN
17 CRIMINAL CASES. IN CASES WHERE THERE ARE
18 MULTIPLE ACCUSED WHERE SOME OR ALL OF
19 THEM HAVE NO MEANS TO SECURE THEIR OWN
20 COUNSEL, THE PDU SHALL STRIVE TO REPRESENT
21 THOSE QUALIFIED AFTER CONDUCTING MERIT
22 AND INDIGENCT TESTS. THE OBSERVANCE OF THE
23 FIRST-COME-FIRST-SERVED RULE SHALL BE
24 DISCOURAGED IN CRIMINAL CASES AND INSTEAD,
25 PROTOCOLS TO PROTECT AGAINST CONFLICTS OF
26 INTEREST SHALL BE ESTABLISHED THROUGH
27 RULES AND REGULATIONS ISSUED BY THE CHIEF
28 PUBLIC ATTORNEY FOR SUCH PURPOSE.”

29 Sec. 3. Section 16-A, Chapter 5, Title III, Book IV of the same Code, as amended,
30 is hereby further amended to read, as follows:

31 “**SEC. 16-A. Appointment.** – The Chief Public Attorney
32 shall be appointed by the President **FOR A TERM OF SIX (6)**
33 **YEARS FROM A LIST OF AT LEAST THREE (3)**

1 **NOMINEES PREPARED BY THE JUDICIAL AND BAR**
2 **COUNCIL (JBC). SUCH APPOINTMENT NEED NO**
3 **CONFIRMATION AND NO CHIEF PUBLIC ATTORNEY**
4 **SHALL SERVE FOR MORE THAN TWO TERMS.** The
5 Deputy Chief Public Attorneys and Regional Public Attorneys
6 shall be appointed by the President upon the recommendation of
7 the Chief Public Attorney. The Deputy Chief Public Attorneys and
8 Regional Public Attorneys shall not be removed or suspended,
9 except for cause provided by law; Provided, That the Deputy Chief
10 Public Attorneys, the Regional Public Attorneys and the Assistant
11 Regional Public Attorneys, the Provincial Public Attorneys, the
12 City Public Attorneys and Municipal District and Municipal
13 District Public Attorney shall have served as Public Attorneys **OR**
14 **HAVE BEEN PRACTISING CRIMINAL LAW** for at least
15 five (5) years immediately prior to their appointment as such. The
16 administrative and support personnel and other lawyers in the
17 Public Attorney's Office shall be appointed by the Chief Public
18 Attorney, in accordance with civil service laws, rules, and
19 regulations."

20 Sec. 4. Section 16-D, Chapter 5, Title III, Book IV of the same Code, as amended,
21 is hereby further amended to read, as follows:

22 "SEC. 16-D. Exemption from Fees and Costs of the Suit.
23 – The **INDIGENT** clients of the PAO shall be exempt from
24 payment of docket and other fees incidental to instituting **OR**
25 **DEFENDING ACTIONS** in court and other quasi-judicial
26 bodies, as an original proceeding or on appeal.

27 "The costs of the suit, attorney's fees and contingent fees
28 imposed upon the adversary of the PAO clients after a
29 successful litigation shall be deposited in the National Treasury
30 as trust fund and shall be disbursed **TO AUGMENT ITS**
31 **OPERATING REQUIREMENTS AND** for special
32 allowances of authorized officials and lawyers of the PAO."

1 Sec. 5. Section 16-E, Chapter 5, Title III, Book IV of the same Code, as amended,
2 is hereby repealed.

3 Sec. 6. Section 7 of Republic Act No. 9406, is hereby amended to read, as follows:

4 “SEC. 7. *Ratio of Public Attorney Position to an Organized*
5 **COURT OR BRANCH.** – There shall be a corresponding
6 number of public attorney positions at the ratio of **AT LEAST**
7 one public attorney to an organized **COURT OR BRANCH** and
8 the corresponding administrative and support staff thereto.

9 **WHENEVER NEW COURTS OR BRANCHES**
10 **THEREOF ARE CREATED, THERE SHALL BE**
11 **AUTOMATICALLY CREATED A PUBLIC ATTORNEY**
12 **POSITION WHERE SUCH COURTS OR BRANCHES**
13 **ARE SEATED. THE CHIEF PUBLIC ATTORNEY IS**
14 **FURTHER AUTHORIZED TO INCREASE OR**
15 **DECREASE THE NUMBER OF PUBLIC ATTORNEYS**
16 **ASSIGNED TO AN ORGANIZED COURT OR BRANCH**
17 **AS THE NEED THEREOF ARISES. PUBLIC**
18 **ATTORNEYS DESIGNATED TO THE PUBLIC DEFENSE**
19 **UNITS MAY APPEAR BEFORE ANY BRANCH OF THE**
20 **COURT IN THE DISTRICT WHERE THEY ARE**
21 **ASSIGNED.”**

22 Sec. 7. Section 9 of Republic Act No. 9406, is hereby amended to read as follows:

23 “SEC. 9 *Grant of Special Allowances.* - The Chief Public
24 Attorney, the Deputy Chief Public Attorneys, the Regional Public
25 Attorneys, the Provincial, City and Municipal District Public
26 Attorneys, other PAO lawyers and officials who have direct
27 supervision over PAO lawyers shall be granted special allowances
28 in the amounts to be determined by the Secretary of the
29 Department of Budget and Management (DBM) and the Chief
30 Public Attorney.

31 The grant of said special allowances shall **BE IN SUCH**
32 **AMOUNTS AND UP TO THE EXTENT ONLY THAT CAN**
33 **BE SUPPORTED BY THE TRUST FUND; PROVIDED,**

1 **THAT THE SAID SPECIAL ALLOWANCE SHALL** not
2 exceed one hundred percent (100%) of the basic salary **AS**
3 **PROVIDED IN REPUBLIC ACT NO. 6758, OTHERWISE**
4 **KNOWN AS THE SALARY STANDARDIZATION LAW,**
5 **AS AMENDED,** of the PAO officials and lawyers as provided in
6 the immediately preceding paragraph.”

7 *Sec. 8. Recovery from Defendant.* – The Chief Public Attorney, on behalf of the
8 State, may recover reimbursement from each person who has received legal
9 representation, assistance, or counselling under this Act to which: (1) he/she was not
10 entitled, (b) with respect to which he/she was not an indigent person when he/she
11 received it, or (c) he/she is financially able to reimburse the State for it according to
12 the standards of ability to pay to be issued by the Chief Public Attorney. The funds
13 recovered shall be paid into the trust fund.

14 *Sec. 9. Reports.* – The Chief Public Attorney shall submit an annual report to
15 the President and to both Houses of Congress showing the number of persons
16 represented, the crimes involved, the outcome of each case, and the expenditures
17 made in carrying out the responsibilities imposed by this Act. The Commission on
18 Audit shall likewise conduct an annual performance audit of the PAO.

19 *Sec. 10. Implementing Rules and Regulations.* – Within ninety (90) days from
20 the approval of this Act, the DBM and PAO shall adopt and issue the rules and
21 regulations for the effective implementation of this Act.

22 *Sec. 11. Repealing Clause.* – All laws, executive orders, presidential decrees,
23 presidential proclamations, letters of instruction, rules and regulations or parts
24 thereof which are inconsistent with the provisions of this Act are hereby repealed or
25 modified accordingly.

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

29 *Sec. 13. Effectivity Clause.* – This Act shall take effect fifteen (15) days following
30 its publication in the Official Gazette or in two (2) newspapers of general circulation
31 in the Philippines.

Approved,