

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

SENATE

S. No. 330

fb

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

SENATE

S. No. 330

Introduced by Senator Antonio "Sonny" F. Trillanes IV

AN ACT
TO PROVIDE UNIFORM REQUIREMENTS AND/OR PROCEDURE FOR
MAKING ARREST AND FOR OTHER PURPOSES

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

- 1 **SECTION 1. *Definition of Terms.*** – *As used in this Act, the term -*
- 2 a) "*Arrest*" means the taking into custody of a person for an alleged crime, to
- 3 be investigated thereof and thus restraining his freedom of movement. It shall
- 4 include the practice of issuing "invitation" for the same purpose in the
- 5 character of a command which the person so invited cannot defy;
- 6 b) "*Probable cause*" means such facts and circumstances as can convincingly
- 7 engender a well-founded belief in an unbiased mind that the person to be
- 8 arrested has indeed committed or is otherwise involved in the commission of
- 9 a crime;
- 10 c) "*Warrant*" refers to a written process issued by a judicial tribunal for the
- 11 arrest of the person or persons specifically named therein;
- 12 d) "*Person*" refers only to natural person;
- 13 e) "*Youthful offender*" refers to any person who at the time of the commission
- 14 of the offense and arrest is nine (9) years old or over but under eighteen (18)
- 15 years of age , although emancipated in accordance with law;

1 **SEC. 2. Probable Cause Mandatory.** – Arrest, as well as a search on the person
2 of the subject to be arrested or on the occasion of such arrest, to be valid, must be by
3 virtue of probable cause.

4
5 **SEC. 3. Arrest Upon a Warrant.** – Except as otherwise authorized herein, arrest
6 may be made only upon a warrant validly issued thereof. The determination of the
7 existence of probable cause for the issuance of the warrant shall be done personally by
8 the judge who signed the warrant, by examining the applicant therefor and his witnesses
9 through searching questions whereof the answers given shall be under oath or affirmation
10 and the proceedings duly recorded. The officer to whom the warrant of arrest was
11 delivered for execution shall cause the same to be executed within ten (10) days from
12 receipt thereof, and within ten (10) days after the period for execution of the warrant has
13 expired, the officer assigned to execute the same shall make a report to the judge who
14 issued the warrant. In case of failure to execute the same, he shall state the reasons
15 therefor.

16
17 **SEC. 4. Arrest Without a Warrant.** – A peace officer or any private person may,
18 even without a warrant, effect an arrest:

- 19 a) of any person who is attempting to commit a crime or actually committing a
20 crime or has committed a crime in his presence or within his perception;
21 b) when he has knowledge of the commission of a crime whereof probable
22 cause exists that the person to be arrested is the one who committed the
23 crime; or
24 c) when the person to be arrested is known to the person making the arrest to be
25 a fugitive from justice or an escapee from a penal establishment or place of
26 confinement where he is serving sentence or being held while his case is

1 pending, or has escaped while being transferred from one confinement to
2 another.

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

7
8 **SEC.5. Duties of Arresting Officer or Person** – In making the arrest, the peace
9 officer or private person shall act accordingly as follows:

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

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

22 c) When the arrest is made by a peace officer, the person arrested shall forthwith
23 be immediately informed, in a language known to and understood by him, that
24 he has the right to remain silent; that any statement he may make or give may
25 be used against him; that he has the right to be assisted by counsel of his
26 choice and if he could not afford to engage the services of counsel, the
27 Government shall provide him with one. Beyond these, the rights accorded by

1 Republic Act No.7438 to an arrested or detained person, in so far as not
2 inconsistent with the provision of this Act, shall be observed and complied
3 with.

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

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

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

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

26 The admissibility in evidence of articles seized from the person arrested,
27 confirmatory of the commission of an offense, shall not be affected by a judicial

1 declaration of illegality or invalidity of the arrest, except when the evidence is shown to
2 be merely “planted” to incriminate the person arrested. The illegality or invalidity of the
3 arrest shall render the public officer or private person responsible thereof criminally,
4 civilly and/or administratively liable as the case may be.

5
6 **SEC. 7. *Penalty Clause.*** – Any public officer or private person found to have
7 violated any provision of this Act through manifest disregard of the rights of the
8 aggrieved party, evident bad faith, or gross inexcusable negligence, shall suffer the
9 penalty of imprisonment of not less than two (2) years nor more than six (6) years and/or
10 a fine of not less than six thousand pesos (P6,000.0) unless the violation is punished with
11 a higher penalty under the Revised Penal Code or other law, in which case the higher
12 penalty shall be imposed.

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

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

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

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,