

Republic of the Philippines  
Congress of the Philippines  
Metro Manila  
Fifteenth Congress  
Third Regular Session

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Begun and held in Metro Manila, on Monday, the twenty-third day of July, two thousand twelve.

[ REPUBLIC ACT NO. 10389 ]

AN ACT INSTITUTIONALIZING RECOGNIZANCE AS A MODE OF GRANTING THE RELEASE OF AN INDIGENT PERSON IN CUSTODY AS AN ACCUSED IN A CRIMINAL CASE AND FOR OTHER PURPOSES

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

SECTION 1. *Short Title.* — This Act shall be known as the "Recognizance Act of 2012".

SEC. 2. *Statement of Policy.* — It is the declared policy of the State to promote social justice in all phases of national development, including the promotion of restorative justice as a means to address the problems confronting the criminal justice system such as protracted trials, prolonged resolution of cases, lack of legal representation, lack of judges, inability to post bail bond, congestion in jails, and lack of opportunity to reform and rehabilitate offenders. In consonance with the principle of presumption of innocence, the 1987 Philippine Constitution recognizes and guarantees the right to bail or to be released on recognizance as may be provided by law. In furtherance of this policy, the right of persons, except those charged with crimes

punishable by death, *reclusion perpetua*, or life imprisonment, to be released on recognizance before conviction by the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it, upon compliance with the requirements of this Act, is hereby affirmed, recognized and guaranteed.

SEC. 3. *Recognizance Defined.* – Recognizance is a mode of securing the release of any person in custody or detention for the commission of an offense who is unable to post bail due to abject poverty. The court where the case of such person has been filed shall allow the release of the accused on recognizance as provided herein, to the custody of a qualified member of the barangay, city or municipality where the accused resides.

SEC. 4. *Duty of the Courts.* – For purposes of stability and uniformity, the courts shall use their discretion, in determining whether an accused should be deemed an indigent even if the salary and property requirements are not met. The courts may also consider the capacity of the accused to support not just himself/herself but also his/her family or other people who are dependent on him/her for support and subsistence.

Other relevant factors and conditions demonstrating the financial incapacity of the accused at the time that he/she is facing charges in court may also be considered by the courts for the purpose of covering as many individuals belonging to the marginalized and poor sectors of society.

SEC. 5. *Release on Recognizance as a Matter of Right Guaranteed by the Constitution.* – The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment: *Provided*, That the accused or any person on behalf of the accused files the application for such:

(a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and

(b) Before conviction by the Regional Trial Court: *Provided, further*, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense

charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance.

SEC. 6. *Requirements.* – The competent court where a criminal case has been filed against a person covered under this Act shall, upon motion, order the release of the detained person on recognizance to a qualified custodian: *Provided*, That all of the following requirements are complied with:

(a) A sworn declaration by the person in custody of his/her indigency or incapacity either to post a cash bail or proffer any personal or real property acceptable as sufficient sureties for a bail bond;

(b) A certification issued by the head of the social welfare and development office of the municipality or city where the accused actually resides, that the accused is indigent;

(c) The person in custody has been arraigned;

(d) The court has notified the city or municipal sanggunian where the accused resides of the application for recognizance. The sanggunian shall include in its agenda the notice from the court upon receipt and act on the request for comments or opposition to the application within ten (10) days from receipt of the notice. The action of the sanggunian shall be in the form of a resolution, and shall be duly approved by the mayor, and subject to the following conditions:

(1) Any motion for the adoption of a resolution for the purpose of this Act duly made before the sanggunian shall be considered as an urgent matter and shall take precedence over any other business thereof: *Provided*, That a special session shall be called to consider such proposed resolution if necessary;

The resolution of the sanggunian shall include in its resolution a list of recommended organizations from whose members the court may appoint a custodian.

(2) The presiding officer of the sanggunian shall ensure that its secretary shall submit any resolution adopted under this Act within twenty-four (24) hours from its passage to the mayor

who shall act on it within the same period of time from receipt thereof;

(3) If the mayor or any person acting as such, pursuant to law, fails to act on the said resolution within twenty-four (24) hours from receipt thereof, the same shall be deemed to have been acted upon favorably by the mayor;

(4) If the mayor or any person acting as such, pursuant to law, disapproves the resolution, the resolution shall be returned within twenty-four (24) hours from disapproval thereof to the sanggunian presiding officer or secretary who shall be responsible in informing every member thereof that the sanggunian shall meet in special session within twenty-four (24) hours from receipt of the veto for the sole purpose of considering to override the veto made by the mayor.

For the purpose of this Act, the resolution of the sanggunian of the municipality or city shall be considered final and not subject to the review of the Sangguniang Panlalawigan, a copy of which shall be forwarded to the trial court within three (3) days from date of resolution.

(e) The accused shall be properly documented, through such processes as, but not limited to, photographic image reproduction of all sides of the face and fingerprinting: *Provided*, That the costs involved for the purpose of this subsection shall be shouldered by the municipality or city that sought the release of the accused as provided herein, chargeable to the mandatory five percent (5%) calamity fund in its budget or to any other available fund in its treasury; and

(f) The court shall notify the public prosecutor of the date of hearing therefor within twenty-four (24) hours from the filing of the application for release on recognizance in favor of the accused: *Provided*, That such hearing shall be held not earlier than twenty-four (24) hours nor later than forty-eight (48) hours from the receipt of notice by the prosecutor: *Provided, further*, That during said hearing, the prosecutor shall be ready to submit the recommendations regarding the application made under this Act, wherein no motion for postponement shall be entertained.

*SEC. 7. Disqualifications for Release on Recognizance.* – Any of the following circumstances shall be a valid ground for the court to disqualify an accused from availing of the benefits provided herein:

(a) The accused had made untruthful statements in his/her sworn affidavit prescribed under Section 5(a);

(b) The accused is a recidivist, quasi-recidivist, habitual delinquent, or has committed a crime aggravated by the circumstance of reiteration;

(c) The accused had been found to have previously escaped from legal confinement, evaded sentence or has violated the conditions of bail or release on recognizance without valid justification;

(d) The accused had previously committed a crime while on probation, parole or under conditional pardon;

(e) The personal circumstances of the accused or nature of the facts surrounding his/her case indicate the probability of flight if released on recognizance;

(f) There is a great risk that the accused may commit another crime during the pendency of the case; and

(g) The accused has a pending criminal case which has the same or higher penalty to the new crime he/she is being accused of.

*SEC. 8. Qualifications of the Custodian of the Person Released on Recognizance.* – Except in cases of children in conflict with the law as provided under Republic Act No. 9344, the custodian of the person released on recognizance must have the following qualifications:

(a) A person of good repute and probity;

(b) A resident of the barangay where the applicant resides;

(c) Must not be a relative of the applicant within the fourth degree of consanguinity or affinity; and

(d) Must belong to any of the following sectors and institutions: church, academe, social welfare, health sector, cause-oriented groups, charitable organizations or organizations engaged in the rehabilitation of offenders duly accredited by the local social welfare and development officer.

If no person in the barangay where the applicant resides belongs to any of the sectors and institutions listed under paragraph (d) above, the custodian of the person released on recognizance may be from the qualified residents of the city or municipality where the applicant resides.

**SEC. 9. *Duty of the Custodian.*** – The custodian shall undertake to guarantee the appearance of the accused whenever required by the court. The custodian shall be required to execute an undertaking before the court to produce the accused whenever required. The said undertaking shall be part of the application for recognizance. The court shall duly notify, within a reasonable period of time, the custodian whenever the presence of the accused is required. A penalty of six (6) months to two (2) years imprisonment shall be imposed upon the custodian who failed to deliver or produce the accused before the court, upon due notice, without justifiable reason.

**SEC. 10. *Role of the Probation Officer.*** – Upon release of the person on recognizance to the custodian, the court shall issue an order directing the Probation Office concerned to monitor and evaluate the activities of such person. The Probation Office concerned shall submit a written report containing its findings and recommendations on the activities of the person released on recognizance on a monthly basis to determine whether or not the conditions for his/her release have been complied with. The prosecution including the private complainant, if any, shall be given a copy of such report.

**SEC. 11. *Arrest of a Person Released on Recognizance.*** – The court shall order the arrest of the accused, who shall forthwith be placed under detention, due to any of the following circumstances:

(a) If it finds meritorious a manifestation made under oath by any person after a summary hearing, giving the accused an opportunity to be heard;

(b) If the accused fails to appear at the trial or whenever required by the abovementioned court or any other competent court without justification, despite due notice;

(c) If the accused is the subject of a complaint for the commission of another offense involving moral turpitude and the public prosecutor or the mayor in the area where the offense is committed recommends the arrest to the court; or

(d) *If it is shown that the accused committed an act of harassment such as, but not limited to, stalking, intimidating or otherwise vexing private complainant, prosecutor or witnesses in the case pending against the accused: Provided, That upon the issuance by the court of such order, the accused shall likewise become the proper subject of a citizen's arrest pursuant to the Rules of Court.*

SEC. 12. *No Release on Recognizance After Final Judgment or Commencement of Sentence; Exception.* – The benefits provided under this Act shall not be allowed in favor of an accused after the judgment has become final or when the accused has started serving the sentence: *Provided, That this prohibition shall not apply to an accused who is entitled to the benefits of the Probation Law if the application for probation is made before the convict starts serving the sentence imposed, in which case, the court shall allow the release on recognizance of the convict to the custody of a qualified member of the barangay, city or municipality where the accused actually resides.*


SEC. 13. *Separability Clause.* – If any provision of this Act or the application of such provision to any person or circumstance is declared invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SEC. 14. *Repealing Clause.* – All laws, decrees and orders or parts thereof inconsistent herewith are deemed repealed or modified accordingly, unless the same are more beneficial to the accused.

SEC. 15. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

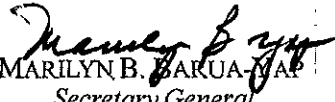
Approved,

  
JUAN PONCE ENRILE  
*President of the Senate*

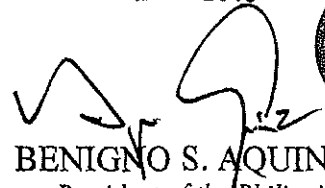
  
FELICIANO BELMONTE JR.  
*Speaker of the House of Representatives*

This Act which originated in the House of Representatives was finally passed by the House of Representatives and the Senate on December 19, 2012 and December 10, 2012, respectively.

  
EMMA LIRIO-REYES  
*Secretary of the Senate*

  
MARILYN B. BARUA-TAY  
*Secretary General House of Representatives*

Approved: MAR 14 2013

  
BENIGNO S. AQUINO III  
*President of the Philippines*



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