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TITLE : AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED,
DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF
THE ARRESTING, DETAINING, AND INVESTIGATING OFFICERS, AND
PROVIDING PENALTIES FOR VIOLATIONS THEREOF

TEXT :

S. No. 1452
H. No. 1772

Republic of the Philippines
Congress of the Philippines
Metro Manila

Fifth Regular Session

Begun and held in Metro Manila, on Monday, the twenty-second day
of July, nineteen hundred and ninety-one.

REPUBLIC ACT No. 7438

AN ACT DEFINING CERTAIN RIGHTS OF PERSON
ARRESTED, DETAINED OR UNDER CUSTODIAL
INVESTIGATION AS WELL AS THE DUTIES OF THE
ARRESTING, DETAINING, AND INVESTIGATING
OFFICERS, AND PROVIDING PENALTIES FOR
VIOLATIONS THEREOF

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

SECTION 1. Statement of policy. - It is the policy of the
State to value the dignity of every human being and guarantee full
respect for human rights.

SEC. 2. Rights of Persons Arrested, Detained, or under
Custodial Investigation; Duties of Public Officers. - a) Any
person arrested, detained or under custodial investigation shall

at all times be assisted by counsel.

b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.

e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise such waiver shall be null and void and of no effect.

f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor of priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-government organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiance or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or neice, and guardian or ward.

As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have

committed, without prejudice to the liability of the "inviting" officer for any violation of law.

SEC. 3. Assisting Counsel. - Assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or those charged with the prosecution of crimes.

The assisting counsel other than the government lawyers shall be entitled to the following fees:

a) The amount of One hundred fifty pesos (P150.00) if the suspected person is chargeable with light felonies,

b) The amount of Two hundred fifty pesos (P250.00) if the suspected person is chargeable with less grave or grave felonies;

c) The amount of Three hundred fifty pesos (P350.00) if the suspect is chargeable with a capital offense.

The fee for the assisting counsel shall be paid by the city or municipality where the custodial investigation is conducted, provided that if the municipality or city cannot pay such fee, the province comprising such municipality or city shall pay the fee: Provided, That the Municipal or City Treasurer must certify that no funds are available to pay the fees of assisting counsel before the province pays said fees.

In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provision of Article 125 of the Revised Penal Code.

SEC. 4. Penalty Clause. - a) Any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of Six thousand pesos (P6,000.00) or a penalty of imprisonment of not less than eight (8) years but not more than ten (10) years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

The same penalties shall be imposed upon a public officer or employee, or anyone acting upon orders of such investigating officer or in his place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel.

b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested,

detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than four (4) years, and a fine of Four thousand pesos (P4,000.00).

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

SEC. 5. Repealing Clause. - Republic Act No. 857, as amended, is hereby repealed. Other laws, presidential decrees, executive orders or rules and regulations, or parts thereof inconsistent with the provisions of this Act are repealed or modified accordingly.

SEC. 6. Effectivity. - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in any daily newspaper of general circulation in the Philippines.

Approved,

RAMON V. MITRA
Speaker of the House
of Representatives

NEPTALI A. GONZALES
President of the Senate

This bill which is a consolidation of Senate Bill No. 1452 and House Bill No. 1772, was finally passed by the Senate and the Representatives on February 5, 1992.

CAMILO L. SABIO
Secretary General
House of Representatives

ANACLETO D. BADOY, JR.
Secretary of the Senate

Approved: APRIL 27, 1992

CORAZON C. AQUINO
President of the Philippines

