



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

DEPARTMENT CIRCULAR NO: 020

TO : ALL PROSECUTORS OF THE NATIONAL PROSECUTION SERVICE

**SUBJECT : POLICY ON PRO-ACTIVE INVOLVEMENT OF PROSECUTORS
IN CASE BUILD-UP**

Date : MAR 31 2023

In the interest of the service, pursuant to the provisions of existing laws, and in order to promote efficient and effective administration of justice, all prosecutors of the National Prosecution Service are hereby directed to strictly observe and implement the following policies and guidelines relative to their pro-active involvement in the investigation of crimes:

Section 1. Policy. – The conduct of preliminary investigation is an executive function wherein the prosecutor exercises investigative or inquisitorial powers, the sole purpose of which is to determine whether a crime has been committed and whether there is a *prima facie* case against respondent and a reasonable certainty of conviction based on the available documents, witness/es, real evidence and the like. It includes the powers to administer oaths, summon witnesses, require the production of documents by a *subpoena duces tecum*¹, to inspect records and premises, investigate the activities of persons or entities coming under the prosecutor's jurisdiction, to secure or require the disclosure of information by means of accounts, records, reports, statements, the testimony of witnesses, and production of documents², take oral evidence of witnesses, subpoena witnesses to appear and testify under oath before them³.

Accordingly, as a matter of policy, and consistent with law, relevant Department of Justice issuances, and these guidelines, all prosecutors shall take an active role in the investigation of crimes covered by these guidelines, particularly during the case build-up stage where they may require, assist or otherwise cooperate with the complainants and/or law enforcement agencies⁴ (LEA).

¹ Section 37, Revised Administrative Code.

² *Manila Electric Company v. Atilano*, G.R. No. 166758, 27 June 2012.

³ Section 9, Republic Act No. 10071.


⁴ Include but not limited to the following, to wit: Philippine National Police (PNP), National Bureau of Investigation (NBI), Philippine Drug Enforcement Agency (PDEA), Bureau of Customs (BOC), Anti-Money Laundering Council (AMLC), Securities and Exchange Commission (SEC), Bureau of Internal Revenue (BIR), Office of the Ombudsman (OMB), Anti-Terrorism Council (ATC), Philippine Coast Guard (PCG), and other agencies which have the legal authority to enforce laws or investigate the commission of crimes.

Section 2. Quantum of Proof. In carrying out such role, prosecutors must ensure the existence of a *prima facie* case and a reasonable certainty of conviction based on available documents, witness/es, real evidence and the like. *Prima facie* evidence is such status of evidence which on its own and if left uncontroverted, is sufficient to establish all the elements of a crime.

Section 3. Scope. These guidelines shall apply to the following:

- (a) Heinous crimes, such as but not limited to the following:
 - (1) Treason under Article 114 of the Revised Penal Code (RPC);
 - (2) Piracy and Qualified Piracy under Articles 122 and 123 of the RPC, respectively;
 - (3) Qualified Bribery under Article 211-A of the RPC;
 - (4) Parricide under Article 245 of the RPC;
 - (5) Murder under Article 248 of the RPC;
 - (6) Infanticide under Article 255 of the RPC;
 - (7) Kidnapping and Serious Illegal Detention under Article 267 of the RPC;
 - (8) Robbery with violence against and intimidation of persons under Article 294 of the RPC;
 - (9) Destructive Arson under Article 320 of the RPC;
 - (10) Rape under Article 335 of the RPC;
 - (11) Plunder under Republic Act No. 7080; and
 - (12) Carnapping under Section 14 of Republic Act No. 6539;
- (b) All violations of Republic Act No. 9165, otherwise known as "The Dangerous Drugs Act, as amended" as amended by Republic Act No. 10640;
- (c) All violations of Republic Act No. 9160 otherwise known as the "Anti-Money Laundering Act of 2001" as amended by Republic Act No. 10365;
- (d) All violations of Republic Act No. 11479 otherwise known as the "Anti-Terrorism Act of 2020";
- (e) All violations of Republic Act No. 10168 otherwise known as the "Terrorism Financing Prevention and Suppression Act of 2012"; and
- (f) All other capital offenses that are punishable by *reclusion perpetua* or life imprisonment;

Section 4. Close Coordination and Cooperation. – All heads of prosecution offices shall ensure that all prosecutors within their respective offices shall, as far as practicable, be available to assist, coordinate and cooperate with, and provide sufficient legal guidance to, law enforcement agencies (LEA) in all planned operations such as but not limited to buy bust, controlled delivery operation, entrapment, application for search warrant, and the like, starting from their inception until successful termination of the case. Prosecutors shall be available at any hour of the day or night, even remotely via available telecommunications technology, for purposes



of consultation, cooperation and coordination on matters involving proper collection and preservation of evidence, such as but not limited to interviewing of witnesses, preparation of Judicial Affidavits, and vetting of evidence.

In case of lack of available prosecutors in a city or provincial prosecution office for this purpose, Regional Prosecutors shall designate such number of prosecutors from the Regional Prosecution Office or from nearby prosecution offices within their region, in order to complement or augment such city or provincial prosecution office where there is a lack of available prosecutors.

Section 5. Evaluation, Case Build-Up and Preliminary Investigation. -

Criminal complaints received by prosecution offices from private individuals, as well as formal referrals for investigation from LEAs involving crimes covered by this issuance but not subject to inquest, shall, within ten (10) working days from receipt, be evaluated to determine if they contain all the necessary evidence to prove the essential elements of the crime and should be docketed for preliminary investigation.


Should the evaluation disclose that the complaint or referral contains all the necessary evidence to prove all the essential elements of the crime, the assisting prosecutor who conducted the evaluation shall certify that there is a sufficient ground to conduct preliminary investigation. The complaint or referral shall then be docketed for the conduct of preliminary investigation in accordance with Rule 112 of the Revised Rules of Criminal Procedure.

In all cases for preliminary investigation, the investigating prosecutor shall issue a Certification as to the existence of *prima facie* case and of a reasonable certainty of conviction based on available documents, witness/es, real evidence and the like, or the lack thereof.

However, should the evaluation result in a finding that the complaint is not supported by sufficient evidence, or that there are lacking pieces of evidence, the complaint shall be referred back to the private complainant or the referring LEA along with the following: (1) a report on the result of the evaluation; (2) an advice about the lacking evidence; and (3) a directive to secure and submit the said lacking evidence/s. For this purpose, the complainant or referring LEA, or other concerned LEA/s may be subpoenaed to appear for a conference or to produce necessary documents if the assisting prosecutor deems it necessary or advantageous under the circumstances.

If the complaint cannot still be supported by sufficient evidence, or that the lacking pieces of evidence cannot be located or secured within a reasonable period of time from its referral back to the private complainant or the referring LEA as contemplated under the preceding paragraph, it shall be closed and terminated without prejudice to refiling, with due notice to the complainant or the referring LEA.

The foregoing procedure shall be without prejudice to existing review and approval processes as well as to standard rules on confidentiality that are currently



being observed by the city and provincial prosecutors in connection with preliminary investigation.


Section 6. Inquest Cases. Consistent with the policy on proactive involvement of prosecutors in case build-up, and considering the nature of inquest cases where an offense covered by these guidelines is about to be committed, is being committed or has just been committed, the docket/records section of the office shall immediately refer the complaint and other required documents such as the investigation form, referral letter, complaint-affidavits or arrest and the like to the assisting prosecutors duly designated by the Prosecutor General, city and provincial prosecutors as the case may be. These assisting prosecutors shall render immediate assistance and evaluate the required documents. If the documents contain all the necessary evidence to prove the essential elements of the crime, they shall certify that there is sufficient ground to conduct inquest proceedings. Thereupon, the complaint and other required documents together with the certification of the assisting prosecutors shall be submitted to the head of office or his/her designated personnel for approval for inquest. If approved, an inquest prosecutor shall be designated and the docket/record section shall assign a docket number to the complaint and send the complaint and other required documents to the inquest prosecutor for the immediate conduct of inquest proceedings.

If the complaint and other required documents at that point do not contain all necessary evidence to prove the essential elements of the crime, or the suspect/s are not taken into custody within the period allowed by law, the assisting prosecutor shall so certify such fact and make a recommendation to the head of office or his/her designated personnel for the conduct of regular case build up and, if warranted, a preliminary investigation. The prosecution office concerned must continue to assist, coordinate and cooperate with, and extend sufficient legal guidance with the relevant LEA to build-up the case and ensure the successful prosecution of the same.

The head of office shall closely monitor all inquest proceedings to ensure the lawful arrest of the suspect/s and the proper collection and preservation of all evidence to prove the commission of the crime and ensure a reasonable certainty of conviction.

In all inquest proceedings covered by these Circular, prosecution offices must ensure that all important pieces of evidence are submitted by the LEA to make sure that no suspect who is lawfully arrested without warrant shall be released for further investigation.

Section 7. Designation of Witnesses in Drugs Cases. This Department, in case of inadequate personnel from provincial or city prosecution offices, may designate employees from the local government units (LGU) concerned who shall act as representatives of the National Prosecution Service for purposes of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640. The Department shall likewise provide, in coordination with the Department of Interior and Local Government (DILG), the necessary training for said LGU personnel or NPS representative.



Section 8. Supplementary Application. – These guidelines shall be of supplementary application to the following:

- a. Administrative Order No. 35 s.2012 creating the Inter-Agency Committee on Extra Legal Killings, Enforced Disappearances, Torture, and Other Grave Violations of the Right to Life, Liberty, and Security of Persons;
- b. Administrative Order No. 1 s.2016 creating the Presidential Task Force on Violence against Media Workers; and
- c. Executive Order No. 70 creating the National Task Force to End Local Communist Armed Conflict.

Section 9. Effectivity. This Order shall take effect immediately and shall remain in full force until further orders.

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