



# UNIFIED MANUAL IN THE INVESTIGATION AND PROSECUTION OF ILLEGAL DRUGS CASES



Funded by  
the European Union



Delivered by





MALACAÑAN PALACE  
MANILA

## MESSAGE



For decades, the proliferation of prohibited drugs in the country has caused immeasurable harm to millions of individual users, destroyed countless families and threatened the moral fabric of our society. If we are to finally put an end to this drug menace, running after manufacturers, traffickers and their protectors is not enough. Key reforms in the criminal justice system must also be instituted.

I am therefore pleased that the **Inter-Agency Committee on Anti-Illegal Drugs** has finalized this **Unified Manual in the Investigation and Prosecution of Illegal Drugs Cases**, which will integrate and unify the government's approach in the investigation and prosecution of dangerous drugs cases.

To our law enforcement agents and prosecutors, I ask you to take the letter of this manual to heart as you fulfill your indispensable role in our unrelenting campaign against illegal drug trade, abuse and dependency. Keep in mind that your duty is not just to secure convictions in court, but also to ensure that in every step of your operations and proceedings, you administer justice fairly, effectively and efficiently.

Together, let us make this initiative work so that we may finally end the scourge of illegal drugs and usher in a drug-free nation that we can proudly leave behind for future generations of Filipinos.

RODRIGO ROA DUTERTE

MANILA  
November 2020



Republic of the Philippines  
Office of the President

## PHILIPPINE DRUG ENFORCEMENT AGENCY

PDEA Bldg. NIA Northside Road, National Government Center, Barangay Pinyahan,  
Quezon City 1100 | (02) 927-9702; (02) 928-4060; (02) 928-6358; (02) 928-5292  
[pdea.gov.ph](http://pdea.gov.ph) | PDEA Top Stories | PDEA@PdeaTopStories | pdeatopstories

## MESSAGE

The Unified Manual on Investigation and Prosecution of Illegal Drugs Cases reflects consistent implementation of processes and procedures to achieve accurate and reliable results.

As drug law enforcers, the ultimate test of our efforts is the prosecution of drug cases as we endeavor to minimize, if not eliminate, the drug menace which continue to threaten the health and future of our citizens and our social institutions.

This manual for law enforcement and prosecution agencies unifies the approach to dangerous drug investigation and prosecution, enhancing the effectiveness of all operating units and the justice sector.

Through this manual, the Philippine Drug Enforcement Agency expects a more unified and organized system of fighting illegal drugs towards the realization of drug-free communities.



WILKINS M VILLANUEVA, MPA, CESE  
Director General, PDEA



Republic of the Philippines  
Office of the President

## INTER-AGENCY COMMITTEE ON ANTI-ILLEGAL DRUGS

PDEA Bldg. NIA Northside Road, National Government Center, Barangay Pinyahan, Quezon City

The illegal drug trade claimed the life of my younger brother, Boboy, after a drug syndicate operating in Parañaque and Las Piñas mistook him for a drug informer and gunned him down on December 20, 1990 in Tambo, Parañaque.

Over the last three decades since my brother's killing, I had actively participated in various discussions and fora on illegal drugs and crime prevention, and provided recommendations to law enforcement agencies, including the Philippine Drug Enforcement Agency (PDEA).

Prior to my appointment in January 12, 2018 as Chairman of the Presidential Anti-Corruption Commission (PACC), and recently as Co-Chairman of the Inter-Agency Committee on Anti-Illegal Drugs (ICAD) by President Rodrigo Roa Duterte, I have accepted various positions from previous administrations in order to participate and actively provide inputs concerning heinous crimes related to illegal drugs.

The unholy alliance between corruption and the proliferation of illegal drugs must be destroyed, and put an end to this social monster that threatens the very future of our youth and our country. It is a mistake to ignore its potential to destroy an entire nation.

The printing of the *Unified Manual on the Investigation and Prosecution of Illegal Drugs Cases* could not have come at a more opportune time, as the Duterte Administration intensifies its relentless drive against the illegal drugs trade. This document ushers in a renewed hope in ensuring that justice is meted for every drug dealer arrested, until the last drug lord is finally locked up or executed.

While this document provides the needed guidance for law enforcers and prosecutors, we hope for continued vigilance and decisive action in preventing the entry and use of illegal drugs in our communities to stem the tide of death and dysfunction among families and the lives of others affected by it.

For the tireless efforts of the men and women behind this noteworthy achievement, I look forward to the fruition of our labors towards a nation free of illegal drugs, and a healthier and vibrant society.

Mabuhay kayong lahat!

Signed,

**DANTE LA. JIMENEZ**  
Co-Chairman, ICAD  
Chairman, Presidential Anti-Corruption Commission (PACC)

26 September 2020



Republic of the Philippines  
Office of the President

## PHILIPPINE DRUG ENFORCEMENT AGENCY

PDEA Bldg. NIA Northside Road, National Government Center, Barangay Pinyahan, Quezon City 1100 | (02) 927-9702; (02) 928-4060; (02) 928-6358; (02) 928-5292  
[pdea.gov.ph](http://pdea.gov.ph) | PDEA Top Stories | PDEA@PdeaTopStories | pdeatopstories

### MESSAGE

Adherence to rules and procedures defines professionalism of organizations.

The Unified Manual on Investigation and Prosecution of Illegal Drugs Cases is very relevant and timely as it provides guidance in the implementation of the anti-drug law and prosecution of drugs cases. This is a big boost to the confidence of drug law enforcers to avert legal entanglements in the performance of their duties and responsibilities.

I welcome this undertaking as a fitting initiative as we consolidate our efforts to address one of the most serious problems affecting our country today – illegal drugs.

Let this manual be our beacon in complying with policies and procedures.



**ASEC GREGORIO R. PIMENTEL**  
Deputy Director General for Operations



Republika ng Pilipinas  
**KAGAWARAN NG KATARUNGAN**  
*Department of Justice*  
 Manila

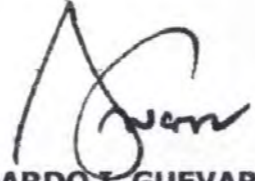


It is with great pride and earnest expectation that I introduce to the bench, the bar, the officers of the law, and the public at large this Unified Manual in the investigation and Prosecution of Drug Cases.

This project carries with it the hope and drive of the Philippine government and the Filipino people in combating the scourge of illegal drugs through the rule of law. As Secretary of the Department of Justice, it is my duty and that of the Department to ensure that the rule of law prevails in all aspects of the administration of justice. This manual is but a new tool in the discharge of our functions, but it follows the tradition of cooperation between law enforcement and the prosecution service in the investigation and case buildup necessary for the success in the War on Drugs.

We measure success in this endeavor by the standard of "good police work," as the saying goes. I urge readers and users of this manual to assiduously study and apply its procedures and instructions for the benefit of the important work at hand. Our faithfulness to legal and constitutional processes will ensure the quality and results of our work, and will instill further faith by others in our legal and constitutional processes—a virtuous cycle which I hope will be the ultimate goal of every case filed and prosecuted against violators of our anti-drug laws.

*Fiat justitia ruat caelum. Let justice be done though the heavens fall.*

  
**MENARDO I. GUEVARRA**  
*Secretary of Justice*



Republic of the Philippines  
**DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT**  
 DILG-NAPOLCOM Center, EDSA corner Quezon Avenue, West Triangle, Quezon City  
<http://www.dilg.gov.ph>



## MESSAGE

My most sincere and heartfelt greetings to the Department of Justice (DOJ) for the successful publication of this **Unified Manual** which stresses the commitment of government to abide by due process in establishing drug-free communities nationwide.

This manual limits variations in the interpretation of the law and guides our law enforcers through the legal procedures in relation to illegal drug cases. As such, this publication does not merely guarantee the success of prosecuting illegal drug personalities and groups, but also equips the police and the government to pursue drug-related investigations and prosecutions.

In this campaign to curb the proliferation of illegal drugs in the country, due process must always be observed, especially as we ensure that justice is fairly and rightly served. As jurisprudence dictates, our goal must be prosecution rather than persecution. Thus, by following a coordinated and codified effort in drug-related investigations and prosecutions, we are likewise ensuring the success of our anti-illegal drugs campaign.

Being the Cluster Head under the Inter-Agency Committee on Anti-Illegal Drugs (ICAD), the Department of the Interior and Local Government fully supports the justice sector's thrust to protect the law and respect every person's rights.

May the men and women in uniform, the country's prosecutors, and fellow public servants persist in effecting justice in the Philippines while ridding our communities of the presence of illegal drugs.

Again, congratulations to the DOJ. *Sumibol at padayon!*

  
**EDUARDO M. AÑO**  
*Secretary*



DILG-OSEC 102220204



Republic of the Philippines  
Department of Health  
**OFFICE OF THE SECRETARY**



## MESSAGE FROM THE CO-CHAIR OF THE REHABILITATION AND REINTEGRATION CLUSTER AND CO-CHAIR OF THE ADVOCACY CLUSTER OF THE ICAD

### Key Message

Greetings to all!

In behalf of the Department of Health (DOH), we would like to extend our congratulations to the Inter-Agency Committee on Anti-Illegal Drugs (ICAD) – Justice Cluster for completing “*The Unified Manual in the Investigation and Prosecution of Illegal Drugs Cases*.” Law enforcement has always been at the very core of President Rodrigo Roa Duterte’s anti-illegal drugs campaign, and our progress in pursuit of a better society is a worthwhile endeavor and a great advantage to our country.

As the co-chair of the Rehabilitation and Reintegration Cluster, alongside the Department of Social Welfare and Development, the DOH is mandated to implement drug rehabilitation programs and to oversee the reintegration of former drug dependents as productive members of our society. Our department recognizes that access to quality care services through Health Care Provider Networks and drug demand reduction strategies for Persons Who Use Drugs are of utmost importance. The Unified Manual, which presents a whole-of-nation approach in terms of the administration’s campaign against dangerous drugs, brings us another step closer in fulfilling the goals of the Universal Health Care Act.

Again, the ICAD and the Justice Cluster have our full support and we congratulate them for this achievement. May the Unified Manual serve its goal of furthering the effective and efficient administration of justice in our beloved country. Thank you and mabuhay.

**LILIBETH C. DAVID, MD, MPH, MPM, CESO I**  
Undersecretary of Health  
Health Facilities and Infrastructure Development Team

Recognizing the extent of the drug problem in the country, President Rodrigo Roa Duterte launched a massive campaign against illegal drugs with the goal of saving human lives and achieving a comfortable, peaceful, and just society for all Filipinos.

The Government does not just view the country’s drug problem as a law enforcement and criminality issue, but as a health problem with social consequences.

The Department of Social Welfare and Development (DSWD), as a Co-Chair of the Rehabilitation and Reintegration Cluster and Advocacy Cluster of the Inter-Agency Committee on Anti-Illegal Drugs, and as the lead agency in social protection, has been implementing the Yakap Bayan Program since 2017. Through the Yakap Bayan, we embrace the recovering persons who used drugs (RPWUDs) to renew their lives, return to their families, and welcome them back to the folds of society.

Together with their families and communities, we can build a strong network of support for the RPWUDs, and transform them from surrenderers into leaders that we can work hand-in-hand with in keeping our country comfortable, peaceful, and just.

Let’s stop dreaming. Let’s start weaving into reality the dream of a more prosperous Pearl of the Orient, not for us, but for the next generation.



**UNDERSECRETARY JOSE ANTONIO R. HERNANDEZ**  
DSWD



Republika ng Pilipinas  
**KAGAWARAN NG KATARUNGAN**  
*Department of Justice*  
Manila



I am pleased to introduce this comprehensive Unified Manual in the Investigation and Prosecution of Drug Cases for the benefit of the frontliners in our country's war against illegal drugs.

This manual is not only comprehensive—it is a “back-to-basics” restatement of criminal law, constitutional law, and criminal procedure that ensures the readiness and knowledge of both law enforcement and prosecution service personnel with regard to the specifics needed to win the war on drugs: through thorough evidence-based case buildup and inter-operability between cooperating agencies.

As a practitioner before joining the DOJ and as the supervising Undersecretary for the National Prosecution Service and the National Bureau of Investigation, I am aware of the need for such coordinated response on the part of investigators and prosecutors for the successful conviction of drug offenders and the ultimate pursuit of justice on behalf of the victims of the scourge of illegal drugs. This manual is akin to new weaponry and body armor for our men and women in the field, designed for their safety and for them to secure the peace for the Filipino people.

I commend the hard work and dedication put into this Unified Manual by the men and women of the DOJ, the NPS, the NBI, the Philippine Drug Enforcement Agency, the Philippine National Police, and the Inter-Agency Committee on Anti-Illegal Drugs. Truly, this is something to be proud of, and its impact on the safety of our streets, neighborhoods, and nation will be felt for many years to come.

  
**Undersecretary Adrian Ferdinand S. Sugay**  
Chairman-TWG on the Drafting of the Unified Manual  
in the Investigation and Prosecution of Illegal Drug Cases



Republic of the Philippines  
NATIONAL POLICE COMMISSION  
**NATIONAL HEADQUARTERS, PHILIPPINE NATIONAL POLICE**  
OFFICE OF THE CHIEF, PNP  
Camp BGen Rafael T Crame, Quezon City



## MESSAGE

“We will further push our fight against illegal drugs, a menace that insidiously destroys our people.”

This is the stern commitment of the Philippine National Police (PNP) in support to the fight of the government against illegal drugs.

While the PNP has gained modest accomplishments in this war since 2016, there is no reason for us to be complacent, rather, we need to intensify our efforts to achieve our ultimate goal of keeping our barangays free from illegal drugs.

The PNP, however, will not be able to see the success of this war on its own. Thus, we are very grateful to the members of the Inter-Agency Committee on Anti-Illegal Drugs (ICAD) and the community for their unwavering support to this fight.

To ensure that the goals of the campaign will be realized, the PNP leadership is continuously training and retooling its men to make them more effective in this war especially in the aspect of investigation of illegal drugs cases and bringing the suspects behind bars.

The crafting of the Unified Manual on the Investigation and Prosecution of Illegal Drugs Cases is therefore very timely as this will guide our law enforcers to conduct investigations properly so that justice will be served on time.

To the team from the Department of Justice and representatives of the ICAD member agencies who patiently collaborated to create this manual, Congratulations!

You all deserve our salute!

  
**CAMILO PANCRATIUS P CASCOLAN**  
Police General  
Chief, PNP



Republika ng Pilipinas  
**(Republic of the Philippines)**  
 Kagawaran ng Katarungan  
**(Department of Justice)**  
 PAMBANSANG KAWANIHAN NG PAGSISIYASAT  
**(NATIONAL BUREAU OF INVESTIGATION)**  
 Manila




ON BEHALF OF THE NBI, THE NBI TASK FORCE AGAINST ILLEGAL DRUGS WOULD LIKE TO CONGRATULATE THE JUSTICE CLUSTER OF THE INTER-AGENCY COMMITTEE AGAINST ILLEGAL DRUGS (ICAD) FOR BRINGING TOGETHER ALL STAKEHOLDERS IN THE WAR ON DRUGS TO CRAFT THE UNIFIED MANUAL FOR THE INVESTIGATION AND PROSECUTION OF DRUG CASES. FINDING A COMMON GROUND TO RALLY EVERYONE IN THIS CAUSE IS AS MUCH A CHALLENGE AS FINDING THE RIGHT PEOPLE TO DO THE JOB. THE DEDICATION AND HARDWORK PUT BY THE PEOPLE WHO PROVIDED THE GROUNDWORK, THE MATERIALS AND RESOURCES ARE UNDOUBTEDLY WORTHY OF THE TRUST AND CONFIDENCE OF ICAD FOR WHICH WE ACKNOWLEDGE AND APPRECIATE.

THIS DOCUMENT CONCRETIZED THE COMMITMENT OF THE GOVERNMENT TO PROTECT ITS CITIZENRY FROM ILLEGAL DRUGS AND THE PASSION OF THE PEOPLE WHO STANDS TALL IN THIS DANGEROUS TIMES TO SAVE THE CITIZENRY FROM THE CLUTCHES OF DRUG TRAFFICKERS BY PUTTING THESE LAWBREAKERS BEHIND BARS AND KEEPING THEIR FAITH IN OUR JUSTICE SYSTEM ALIVE.

THIS DOCUMENT IS A TESTAMENT OF THE UNITED FRONT OF THE PEOPLE WHO WORK ON THIS MANUAL WITH AN OPEN-MIND AND PROFESSIONALISM. THEIR INHERENT DIFFERENCES WAS ONLY ON OPINION NEVER ON THEIR VALUES AND IN WHAT THEY STAND FOR. THEY ARE ONE HELL OF A TEAM. FOR THIS, THEY HAVE EARNED OUR RESPECT AND ADMIRATION.

THIS BUREAU HAS SEEN ENOUGH DRUG TRAFFICKERS WALK OUT OF JAIL AND THE PITFALLS OF INCOMPETENCE AND INEPTITUDE IN THE GOVERNMENT SERVICE. THIS DOCUMENT INTENDS TO ADDRESS THAT IN EVERY CORNER OF THIS BOOK. THIS MANUAL IS MORE THAN A JUST A GUIDE IT IS OUR HOPE FOR AN ORDERLY SOCIETY AND A DRUG FREE PHILIPPINES.

FINALLY, WE WOULD LIKE TO THANK ICAD FOR THE OPPORTUNITY TO HELP AND BE PART OF THIS HISTORIC MANUSCRIPT. THE TIME SPENT IN WRITING THIS MANUAL WAS FUN AS IT WAS ENLIGHTENING. THE MEMORIES OF THOSE MOMENT ARE PRICELESS. OUR GRATITUDE FOR GETTING OUR INSIGHTS AND PERSPECTIVES ON THE SUBJECT, THE BUREAU'S DECADES OF EXPERIENCE AND SKILLS IN NARCOTICS INVESTIGATION WOULD HAVE MEANT NOTHING AT ALL, IF NOT IMPARTED FOR A GOOD CAUSE SUCH AS THIS. WE HOPE THAT OUR INPUTS WERE OF VALUE AS MUCH AS OUR EFFORTS IN ENFORCING THE LAW ON ILLEGAL DRUGS. MAY GOD BLESS ICAD AND ALL ITS MEMBER AGENCY. MAY GOD BLESS THE PHILIPPINES.

  
**ATTY. ROSS JONATHAN V. GALICIA**  
 Commander, Task Force Against Illegal Drugs

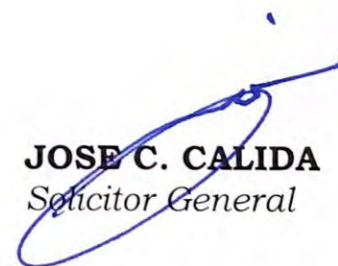
Solidarity, Unity, Synergy.

When the various agencies concerned work together like the cogs of a well-oiled machine, the objectives are achieved so much more efficiently. The Unified Manual in the Investigation and Prosecution of Illegal Drugs Cases (Unified Manual) is the oil that will make the law enforcement machine made of the PNP, PDEA, NBI, etc. and the National Prosecution Service (NPS) work together smoothly and with less friction. Presenting a unified front, the drug menace in the country will be dealt with more effectively.

For this reason, the effort that the Justice Cluster of the ICAD exerted in coming up with the Unified Manual is vale la pena (worthwhile) and commendable.

Congratulations for a work well done. This Unified Manual is indeed a significant contribution to the war on drugs and every operative, law enforcement agent and the NPS will be better armed for it.

Mabuhay.

  
**JOSE C. CALIDA**  
 Solicitor General

# **TABLE OF CONTENTS**



|  |     |  |     |
|--|-----|--|-----|
| DEFINITION OF TERMS AS USED IN THIS MANUAL               | 22  | C. Search of a moving vehicle                              | 108 |
| ABBREVIATIONS  | 25  | D. Consented warrantless searches                          | 110 |
| CHAPTER I: PURPOSE FOR A UNIFIED MANUAL                  | 27  | E. Customs Search  | 111 |
| CHAPTER II: GUIDING PRINCIPLES                           | 31  | F. Stop and Frisk  | 112 |
| SEC. 1. GUIDING PRINCIPLES                               | 33  | G. Exigent and Emergency Circumstances                     | 112 |
| A. Presumption of Innocence and Burden of Proof          | 33  | CHAPTER VI: DETENTION, ARREST, AND CONFESSION              | 115 |
| B. Protection of the Public                              | 33  | SEC. 1. GENERAL PROVISIONS                                 | 117 |
| C. Fair and Impartial Administration of Justice          | 33  | A. Rights of Persons Arrested, Detained, or Under          | 118 |
| D. Promotion of Public Trust                             | 33  | Custodial Investigation                                    |     |
| E. Speedy Disposition of Cases                           | 34  | B. Custodial Investigation                                 | 119 |
| SEC. 2. ADMINISTRATIVE AND TECHNICAL ASPECTS             | 34  | SEC. 2. DETENTION  | 119 |
| A. How the Unified Manual is constructed                 | 34  | SEC. 3. ARREST   | 120 |
| B. How to Use the Manual as an Operational Tool          | 34  | SEC. 4. <i>IN FLAGRANTE DELICTO</i> ARRESTS                | 121 |
| C. How to Update the Manual                              | 34  | A. Requisites  | 121 |
| CHAPTER III: ETHICAL STANDARDS                           | 37  | B. Overt Act Test  | 122 |
| SEC. 1. DECLARATION OF POLICIES                          | 39  | C. Personal knowledge of arresting officer is required     | 123 |
| SEC. 2. CONDUCT IN DISCHARGE OF OFFICIAL DUTIES          | 39  | D. Example of <i>In Flagrante Delicto</i>                  | 123 |
| A. Commitment to public interest and promotion of the    | 39  | E. Not <i>In Flagrante Delicto</i>                         | 124 |
| public trust   |     | F. Other Relevant Jurisprudence                            | 125 |
| B. Professionalism                                       | 39  | SEC. 5. EXTRA-JUDICIAL CONFESSIONS                         | 125 |
| C. Justness, Integrity, and Sincerity                    | 40  | A. Admissibility: Constitutional limitation                | 125 |
| D. Political Neutrality                                  | 40  | B. Requisites  | 126 |
| SEC. 3. PROVISIONS FOR MORE STRINGENT STANDARDS          | 40  | C. Extrajudicial Confession is not a Sufficient Ground for | 126 |
| SEC. 4. STRICT COMPLIANCE                                | 40  | Conviction   |     |
| CHAPTER IV: LEGAL FRAMEWORK                              | 43  | D. Confession is Presumed Voluntary page                   | 127 |
| CHAPTER V: SEARCHES AND SEIZURES                         | 103 | E. Voluntariness May Be Inferred from the Language         | 127 |
| SEC. 1. WARRANTS FOR SEARCH AND SEIZURE OF               | 105 | F. Personal Circumstances of Accused Must Be               | 127 |
| EVIDENCE   |     | Considered   |     |
| A. Purpose for Obtaining Search and Seizure Warrant      | 105 | G. Extrajudicial Confession Made Before Media              | 128 |
| B. Search Warrant Application Requirements               | 105 | CHAPTER VII: OPERATION                                     | 131 |
| C. Existence of Probable Cause                           | 106 | SEC. 1. INITIATORY ACTS                                    | 133 |
| D. Description of Place - Sufficiency                    | 106 | SEC. 2. PLANNING/PREPARATION                               | 133 |
| E. Reasonable Particularity of Description of the Things | 106 | SEC. 3. COORDINATION REQUIREMENTS                          | 134 |
| F. Personal Determination by the Judge - Intent          | 107 | SEC. 4. CONDUCT OF OPERATIONS                              | 135 |
| SEC. 2. EXCEPTIONS TO THE WARRANT REQUIREMENT IN         | 107 | A. Plain <i>In Flagrante</i> Arrest                        | 135 |
| SEARCHES & SEIZURES                                      |     | FLOWCHART 1: <i>IN FLAGRANTE</i> OR BUY BUST               | 141 |
| A. Warrantless search incidental to lawful arrest        | 108 | B. Entrapment/Buy-Bust Operations                          | 142 |
| B. Plain view  | 108 | C. Implementation of Search Warrants                       | 145 |

|  |     |   |     |
|--|-----|---|-----|
| FLOWCHART 2: IMPLEMENTATION OF SEARCH WARRANT  | 150 | SEC. 12. ACTION TO BE TAKEN WHEN THERE IS A FINDING OF PROBABLE CAUSE       | 174 |
| D. Eradication of Marijuana, Opium Poppy, and Other Plant Sources of Dangerous Drugs         | 151 | SEC. 13. ACTION TO BE TAKEN WHEN THERE IS AN ABSENCE OF PROBABLE CAUSE      | 174 |
| FLOWCHART 3: ERADICATION   | 153 | B. INQUEST OF CHILD IN CONFLICT WITH THE LAW (CICL)                         | 174 |
| E. Interdiction  | 154 | SEC. 1. DETERMINATION OF AGE  | 174 |
| FLOWCHART 4: INTERDICTION  | 158 | SEC. 2. BURDEN OF PROOF OF AGE  | 175 |
| F. Controlled Delivery   | 159 | SEC. 3. EXEMPTION FROM CRIMINAL LIABILITY                                   | 175 |
| FLOWCHART 5: CONTROLLED DELIVERY (IN GENERAL)  | 161 | SEC. 4. PROCEDURE FOR HANDLING CHILDREN EXEMPTED FROM CRIMINAL LIABILITY    | 175 |
| SEC. 5. REPORTING REQUIREMENTS   | 162 | SEC. 5. FILING OF INFORMATION   | 176 |
| SEC. 6. HANDLING, CUSTODY AND DISPOSITION OF DRUG AND NON-DRUG EVIDENCE                      | 163 | C. PRELIMINARY INVESTIGATION  | 176 |
| A. Drug Evidence   | 163 | SEC. 1. CONCEPT   | 176 |
| B. Non-Drug Evidence (To Be Covered in A Separate Inventory Sheet and Chain of Custody Form) | 165 | SEC. 2. COMMENCEMENT  | 176 |
| C. Chain of Custody  | 166 | SEC. 3. MATTERS TO BE DETERMINED  | 177 |
| FLOWCHART 6: ILLUSTRATION OF CHAIN CUSTODY   | 168 | D. COMMON PROVISIONS  | 177 |
| CHAPTER VIII: INQUEST PROCEEDING AND PRELIMINARY INVESTIGATION                               | 169 | SEC 1. DOCUMENTARY CHECKLISTS   | 177 |
| A. INQUEST   | 171 | SEC 2. RESOLUTIONS  | 181 |
| SEC. 1. CONCEPT  | 171 | A. Periods  | 181 |
| SEC. 2. VENUE OF INQUEST CASES   | 171 | B. Additional Contents in the Resolution                                    | 181 |
| SEC. 3. DATE AND TIME OF THE CONDUCT OF INQUEST PROCEEDINGS                                  | 171 | C. Parties Who Need to be Furnished with a Copy of the Resolution           | 182 |
| SEC. 4. COMMENCEMENT   | 171 | D. Dismissed Cases Subject for Automatic Review by the Secretary of Justice | 182 |
| SEC. 5. INCOMPLETE DOCUMENTS   | 172 | E. Release of Recovered Articles  | 182 |
| SEC. 6. MATTERS TO BE DETERMINED BY THE INQUEST PROSECUTOR                                   | 172 | SEC. 3. INFORMATION   | 183 |
| SEC. 7. DETERMINATION OF THE ARREST BY THE INQUEST PROSECUTOR                                | 172 | A. Designation of Offense   | 183 |
| SEC. 8. WHERE ARREST WAS PROPERLY EFFECTED   | 172 | B. Parties to be Copy Furnished   | 183 |
| SEC. 9. WHERE ARREST WAS NOT PROPERLY EFFECTED   | 173 | CHAPTER IX: PREPARATIONS FOR TRIAL  | 185 |
| SEC. 10. RELEASE OF DETAINED PERSON FOR FURTHER INVESTIGATION                                | 173 | SEC. 1. REVIEW AND STUDY THE RECORDS OF THE CASE                            | 187 |
| SEC. 11. INQUEST PROPER  | 173 | SEC. 2. OCULAR INSPECTION   | 188 |
|  |     | A. Purpose  | 188 |
|  |     | B. Motion   | 188 |
|  |     | C. Subjects   | 188 |
|  |     | D. Activities   | 188 |
|  |     | SEC. 3. DESTRUCTION   | 190 |
|  |     | CHAPTER X: PLEA BARGAINING AND PRE-TRIAL                                    | 193 |
|  |     | SEC. 1. PLEA BARGAINING   | 195 |

|   |     |
|---|-----|
| A. Applicable Rules in Plea Bargaining              | 195 |
| B. Guidelines for the Prosecutor in Plea Bargaining | 196 |
| SEC. 2. PRE-TRIAL                                   | 198 |
| A. What takes place during Pre-Trial                | 198 |
| CHAPTER XI: POST PROSECUTION                        | 201 |
| SEC. 1. FORFEITURE                                  | 203 |
| SEC. 2. PETITION FOR CERTIORARI                     | 204 |
| A. Procedure  | 204 |
| B. Period   | 204 |
| SEC. 3. MONITORING OF DRUG CASES                    | 205 |
| CHAPTER XII: MISCELLANEOUS PROVISIONS               | 207 |
| SEC. 1. EFFECTIVITY                                 | 209 |
| SEC. 2. SUPERSEDING CLAUSE                          | 209 |
| SEC. 3. UNDERTAKING                                 | 209 |

|  |     |
|--|-----|
| LIST OF APPENDICES   | 211 |
| APPENDIX 1: TABLES I AND II OF ANNEX OF THE 1988 UN<br>CONVENTION AGAINST ILLICIT TRAFFIC<br>IN NARCOTIC, DRUGS AND PSYCHOTROPIC<br>SUBSTANCES | 214 |
| APPENDIX 2: CHAIN OF CUSTODY FORM FOR DRUG<br>EVIDENCE   | 215 |
| APPENDIX 3: CHAIN OF CUSTODY FORM FOR NON-DRUG<br>EVIDENCE   | 216 |
| APPENDIX 4: CHAIN OF CUSTODY FORM FOR LABORATORY   | 217 |
| APPENDIX 5: INVESTIGATION DATA FORM  | 218 |
| APPENDIX 6: CERTIFICATE OF INVENTORY OF SEIZED<br>ITEMS  | 220 |
| APPENDIX 7: SAMPLE AFFIDAVIT OF POSEUR-BUYER   | 221 |
| APPENDIX 8: SAMPLE AFFIDAVIT OF SEIZING OFFICER  | 223 |
| APPENDIX 9: SAMPLE AFFIDAVIT OF INVESTIGATOR   | 225 |
| APPENDIX 10: SAMPLE AFFIDAVIT OF ARRESTING OFFICER   | 227 |
| APPENDIX 11: SALIENT FEATURES OF A.M. No. 21-02-01-SC  | 229 |

# Unified Manual in the Investigation and Prosecution of Illegal Drug Cases

## Definition of Terms As Used in This Manual

**Arrest:** The taking of a person into custody in order that s/he may be bound to answer for the commission of an offense.<sup>1</sup>

**Chain of Custody Principle:** The duly recorded authorized movements and custody of seized drugs or controlled precursors and essential chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to delivery and presentation in court and for destruction by the proper authority. Such record of movements and custody of the seized item shall include the identity and signature of the person who seized and other person/s who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.

**Controlled Precursors and Essential Chemicals (CPECs):** Those substances listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances as enumerated in Annex 1 and those classified and may hereinafter be classified by the Dangerous Drugs Board as such. The term CPECs, likewise includes any preparations or mixtures, containing its salts or isomers or analogs, and those similarly designed or newly introduced chemicals and their derivatives, without having any therapeutic value or if the quantity is far beyond therapeutic requirements.

**Corpus delicti:** Evidence of the commission of the crime including but not limited to recovered and/or seized dangerous drugs, CPECs, paraphernalia, instruments and equipment in violation of RA 9165.

**Dangerous Drugs:** The following are considered dangerous drugs:

- Those listed in the Schedules annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, made an integral part of RA 9165;
- Those listed in the Schedules annexed to the 1971 Single Convention on Psychotropic Substances, made an integral part of RA 9165;

- Those also classified as such by the Dangerous Drugs Board pursuant to Section 93 Article XI of RA 9165 for domestic control; and
- Any preparation or mixture, containing its salts or isomers or analogs, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity is far beyond therapeutic requirements.

**Drug Suspect:** Any person, whether natural or juridical, who is suspected of violating any of the provisions of RA 9165, as amended, “The Volatile Substances Act,” and other related laws or issuances.

**Entrapment:** It is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker.<sup>2</sup>

**In flagrante delicto:** The arrest of a suspect who has just committed, or is in the act of committing, or is attempting to commit a violation of RA 9165 in the presence of a law enforcement officer or a private person.

**Intelligence Report:** For purposes of this Unified Manual, it is any information that can be extracted from the blotter, information reports, and/or Summary of Information, for the purpose of validation, verification, and counter-action.

**Interdiction:** It is the detection, sorting, monitoring, inspection, interception or disruption, and seizure of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, instruments, apparatus, equipment, and paraphernalia being transported by air, sea, or land and/or apprehension of the violator/s, some of which may occur simultaneously.

**Investigation:** It is the process of collecting information in a systematic manner to determine the identity, location, modus operandi, and area of operation of a drug suspect through interview/s, document gathering, surveillance, undercover activities, and other intelligence gathering to support the filing of a criminal case or the arrest of a drug suspect or suspects.

**Investigator/Agent on case:** The law enforcer who identifies suspects, interviews witnesses, and prepares documentation and other requisite documents.

**Marking:** It is the placing by the seizing officer of his/her initials and signature on the items after they have been seized for the purpose of separating the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, removing the possibility of switching, planting, or contamination of evidence.<sup>3</sup>

<sup>1</sup> Section 1, Rule 113, Revised Rules on Criminal Procedure.

<sup>2</sup> See People of the Philippines v. Noel Bartolome, G.R. No. 191726 February 06, 2013, citing People of the Philippines v. Delia Bayani, G.R. No. 179150, June 17, 2008, 554 SCRA 741, 748-751.

<sup>3</sup> See People of the Philippines v. Myrna Gayoso y Arguelles, G.R. No. 206590, March 27, 2017.

**Non-Drug Evidence:** This refers to the evidence other than drug evidence recovered and/or seized that can reasonably prove the commission of the offense.

**Probable Cause (in warrantless searches):** This means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested.<sup>4</sup>

**Probable Cause (in preliminary investigation):** This is defined as such facts as that are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof.<sup>5</sup> This is the basis for filing a criminal information.

**Proof Beyond Reasonable Doubt:** It is the degree of proof that produces moral certainty excluding the possibility of error or that degree of proof which produces conviction in an unprejudiced mind.<sup>6</sup>

**Search Warrant:** It is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.<sup>7</sup>

**Stop and Frisk Search/Terry Search:** It is the act of a law enforcement officer of stopping a citizen on the street to interrogate him, and pat him for weapon(s) or contraband.<sup>8</sup>

**Warrant of Arrest:** A written order signed by a judge directing a law enforcement officer to arrest a person charged with an offense.

<sup>4</sup> See Joey Pestilos, et al. v. Moreno Generoso and People of the Philippines, G.R. No. 182601 November 10, 2014.

<sup>5</sup> See Marie Callo-Caridad v. Philip Ronald Esteban and Teodora Esteban, G.R. No. 191567 March 20, 2013.

<sup>6</sup> See Section 2, Rule 133, Revised Rules on Evidence (A.M. No. 19-08-15-SC).

<sup>7</sup> Section 1, Rule 126, Rules on Criminal Procedure.

<sup>8</sup> See Mario Veridiano y Sapi v. People, G.R. No. 200370, June 7, 2017.

## ABBREVIATIONS

|                    |  |
|--------------------|--|
| <b>AFP</b>         | Armed Forces of the Philippines  |
| <b>AVSEGROUP</b>   | Aviation Security Group  |
| <b>BI</b>          | Bureau of Immigration  |
| <b>BJMP</b>        | Bureau of Jail Management and Penology   |
| <b>BOC</b>         | Bureau of Customs  |
| <b>CICL</b>        | Child in Conflict with the Law   |
| <b>CPEC</b>        | Controlled Precursors and Essential Chemicals                                  |
| <b>DDB</b>         | Dangerous Drugs Board  |
| <b>DOH</b>         | Department of Health   |
| <b>DOJ</b>         | Department of Justice  |
| <b>EOD</b>         | Explosive Ordinance Disposal   |
| <b>FEO</b>         | Firearms and Explosive Office  |
| <b>GHB</b>         | Gamma Hydroxyamphetamine   |
| <b>ICAD</b>        | Inter-Agency Committee on Anti-Illegal Drugs                                   |
| <b>IRR</b>         | Implementing Rules and Regulations   |
| <b>LSD</b>         | Lysergic Acid Diethylamine   |
| <b>LTO</b>         | Land Transportation Office   |
| <b>MDM</b>         | Methylenedioxymethamphetamine or commonly known as “Ecstasy”                   |
| <b>NAIA</b>        | Ninoy Aquino International Airport   |
| <b>NAIA-IADITG</b> | Ninoy Aquino International Airport - Inter-Agency Drug Interdiction Task Group |
| <b>NBI</b>         | National Bureau of Investigation   |
| <b>NPS</b>         | National Prosecution Service   |
| <b>OCA</b>         | Office of the Court Administrator  |
| <b>OSG</b>         | Office of the Solicitor General  |
| <b>PDEA</b>        | Philippine Drug Enforcement Agency   |
| <b>PMA</b>         | Paramethoxyamphetamine   |
| <b>PNP</b>         | Philippine National Police   |
| <b>RA</b>          | Republic Act   |
| <b>RRCP</b>        | Revised Rules on Criminal Procedure  |
| <b>SAF</b>         | Special Action Force   |
| <b>SC</b>          | Supreme Court  |
| <b>TMA</b>         | Trimethoxyamphetamine  |
| <b>TWG</b>         | Technical Working Group  |
| <b>UNODC</b>       | United Nations Office on Drugs and Crime                                       |

# CHAPTER 1:

## PURPOSE FOR A UNIFIED MANUAL

## **CHAPTER I:**

### **Purpose for A Unified Manual**

---

On 6 March 2017, President Rodrigo Roa Duterte issued Executive Order No. 15 (E.O. 15) forming The Inter-Agency Committee on Anti-Illegal Drugs (ICAD) with the function to ensure that all member agencies implement and comply with all policies, laws, and issuances pertaining to the government’s dangerous drugs campaign in an integrated and synchronized manner. In line with this, the ICAD, through its Justice Cluster headed by the Department of Justice, constituted a Technical Working Group (TWG) to formulate an investigation and prosecution manual to guide law enforcement agents and the National Prosecution Service in the investigation and prosecution of cases involving violations of Republic Act No. 9165 (RA 9165), also known as “The Comprehensive Dangerous Drugs Act of 2002”, as amended by Republic Act No. 10640 (RA 10640). This manual is a significant step towards unifying the approach to dangerous drug investigation and prosecution. This manual furthers the commitment of the justice system of the Government to promote and administer justice fairly, effectively, and efficiently.

The law enforcement and prosecution agencies of the Republic of the Philippines have come together with the intent to unify their approaches to the enforcement of RA 9165 and related laws and issuances on control of dangerous drugs under the constitution of the Republic. This manual reflects that intent to improve the effectiveness of the Government’s capacity to protect the public from the dramatic threat posed by drug trafficking and abuse by providing the enforcement official or law enforcement officers with guidance as to how to approach his or her duties.

In some exceptional instances the practical circumstances of an investigation or prosecution will require deviation for good cause from the recommended guidance made in this manual. This is to be expected and has been contemplated in the drafting of this guidance manual. Such deviation is not, by itself, a basis for challenging the actions of the government.

# CHAPTER 2:

## GUIDING PRINCIPLES



## CHAPTER II: Guiding Principles

---

### **Sec. 1. Guiding Principles**

#### **A. Presumption of Innocence and Burden of Proof**

Section 2, Article III of the 1987 Constitution provides that “in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.”

Section 2, Rule 133 of the Revised Rules of Court requires that “[i]n a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.”

#### **B. Protection of the Public**

It is the policy of the State to pursue an effective campaign against the trafficking and use of dangerous drugs and other similar substances. This policy is intended to promote peace and order and ensure public safety.

#### **C. Fair and Impartial Administration of Justice**

All purposes and objectives of a system of justice may be summed up in the compliance of the general mandate that “justice shall be impartially administered.” It also requires that those who are proven guilty of a criminal offense after a full and fair legal process are held accountable for their conduct and the victims of their evil acts can have confidence that justice will be done.

#### **D. Promotion of Public Trust**

The Constitutional mandate that “public office is a public trust” shall serve as a guide in the conduct of officers in implementing this manual.<sup>9</sup>

---

<sup>9</sup> Section 1, Article XI, 1987 Constitution.

It is essential that the law enforcement and the justice system must have the trust of the public in order to effectively fulfill their mandates.

#### **E. Speedy Disposition of Cases**

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious, and oppressive delays.

### **Sec. 2. Administrative and Technical Aspects**

#### **A. How the Unified Manual is constructed**

The manual reflects the intent to provide guidance and to improve the effectiveness of law enforcement agents and prosecutors in conducting investigations and prosecution of violations for RA 9165. It is expected that all law enforcement agents and prosecutors will become familiar with the contents of the manual and will comply with the policies and procedures.

The manual is based on law, jurisprudence, procedures, and best practices in addressing circumstances pertaining to investigation and prosecution of cases involving illegal drugs. Note, however, that the manual does not intend to address all possible circumstances

#### **B. How to Use the Manual as an Operational Tool**

All law enforcement agencies and prosecution shall use this Unified Manual as a guide in the investigation and prosecution of dangerous drug cases without prejudice to existing laws and jurisprudence. Existing Operational Policies, Standard Operating Procedures, and Directives of different agencies which are consistent with this Unified Manual shall continue to be operational; otherwise, these are deemed superseded. Concerned agencies shall update their respective administrative and operational issuances relative to the operation, investigation, and prosecution of illegal drugs in accordance with this Unified Manual.

#### **C. How to Update the Manual**

The Department of Justice, in coordination of the Philippine Drug Enforcement Agency (PDEA), shall be the lead agency responsible for

updating and amending this Unified Manual when deemed necessary or upon recommendation of any member of the Inter-Agency Committee on Anti-Illegal Drugs. The manual shall be revised accordingly as laws and procedures are created, revised, or amended.

# CHAPTER 3:

## ETHICAL STANDARDS

## **CHAPTER III: Ethical Standards**

---

### **Sec. 1. Declaration of Policies**

It is the policy of the State to promote the highest standard of ethics in public service in terms of law enforcement and prosecution of dangerous drugs cases, to include its respective responsibilities and accountabilities.

The Constitutional mandate that “public office is a public trust” shall serve as a guide in the conduct of officers in implementing this manual. “All government officials and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice and lead modest lives.”

### **Sec. 2. Conduct in Discharge of Official Duties<sup>10</sup>**

Law enforcers and prosecutors shall observe the following as standards of personal and professional conduct in the discharge and execution of official duties.

#### **A. Commitment to public interest and promotion of the public trust**

Law enforcers and prosecutors shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly, and economically, particularly to avoid wastage in public funds and revenues.

Law enforcers and prosecutors shall act in a transparent manner that promotes accountability and public trust and enhances the effectiveness of law enforcement agencies and institutions.<sup>11</sup>

#### **B. Professionalism**

Law enforcers and prosecutors shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence, and skill. They shall enter public service with utmost devotion and dedication

---

<sup>10</sup> RA 9165 as amended by RA No. 10640, Revised Penal Code, Rules of Court.

<sup>11</sup> Section 1, Article IX, 1987 Constitution.

to their duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

**C. Justness, Integrity, and Sincerity**

Law enforcers and prosecutors shall remain true to the people at all times. They must act with justness, integrity, and sincerity. They shall not discriminate against anyone, especially the poor and the underprivileged, and they shall process all cases with utmost integrity. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety, and public interest.

**D. Political Neutrality**

Law enforcers and prosecutors shall provide service to everyone without unfair discrimination and regardless of party or political affiliation or preference.

**Sec. 3. Provisions for More Stringent Standards.**

Nothing in this Chapter shall be construed to derogate from any law or any regulation prescribed by any governmental authority or agency, which provides for more stringent standards for law enforcement and prosecution.

**Sec. 4. Strict Compliance**

Failure to comply with the provisions of this Unified Manual may give rise to administrative and/or criminal liability under RA 9165, as amended by RA 10640, the Revised Penal Code, as amended, the Rules of Court, and other pertinent laws. However, as stated in the introduction, in some exceptional instances the practical circumstances of an investigation or prosecution will require deviation for good cause from the recommended guidance made in this manual. This is to be expected and has been contemplated in the drafting of this guidance manual. Such deviation is not, by itself, a basis for challenging the actions of the government or recourse against a government agent.

# CHAPTER 4:

## LEGAL FRAMEWORK

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|--|--|
| <p><b>Section 4. Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.</b></p> <p><b>Elements of Importation:</b></p> <ul style="list-style-type: none"> <li>• Bringing or importing of the dangerous drugs into the Philippines; and</li> <li>• Without being authorized by law.<sup>12</sup></li> <li>• NB: The authority referred to in Sec. 4 pertains to license and permits issued by PDEA.<sup>13</sup></li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the investigating or arresting police officer who will testify on the importation of the drugs and the identification of the accused as the importer of said dangerous drugs;</li> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, inventory, and custody of the seized drugs;</li> <li>• Testimony of the chemist who will testify and identify the seized drug, the test conducted, and the results of the test. S/he will identify the Test Report;</li> <li>• Testimony of the Investigating Officer/ Agent, for purposes of backtracking process;</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination;</li> <li>• The dangerous drugs and/ or controlled precursor and essential chemicals;</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> <li>• Photographs of the seized dangerous drugs and/or controlled precursor and essential chemicals;</li> <li>• Photographs taken during the marking and inventory of the seized items;</li> </ul> |

<sup>12</sup> See People v. Liu, G.R. No. 189272, January 21, 2015.

<sup>13</sup> DBB Resolution No. 1 s. 2014.

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--|---|
|  |  | <ul style="list-style-type: none"> <li>• Request for Laboratory Examination;</li> <li>• Chemistry Report;</li> <li>• Booking/Information of arrested suspects;</li> <li>• Photographs or mug shots of arrested suspect/s; and</li> <li>• Certification from the Compliance Service (for Regulated Drugs).</li> </ul>                          |
| <p><b>Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution, and Transportation.</b></p> <p><b>Sell</b> – Act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.<sup>14</sup></p> <p><b>Elements of Illegal Sale</b></p> <ul style="list-style-type: none"> <li>• Identities of the buyer and seller, the object</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the poseur buyer, or anybody who witnessed the transaction, who will testify on the operation and identify the seller, the buyer, the drugs, and the money;</li> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, inventory, and custody of the seized drugs;</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination;</li> <li>• The dangerous drugs and/ or controlled precursor and essential chemicals;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|--|--|
| <p>buyer and seller, the object and consideration; and</p> <ul style="list-style-type: none"> <li>• The delivery of the thing sold and the payment for it.<sup>15</sup></li> </ul> <p><b>Trading</b> – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers, and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.<sup>16</sup></p> <p><b>Administer</b> – Any act of introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion, or</p> | <ul style="list-style-type: none"> <li>• Testimony of the chemist who will testify and identify the seized drug, the test conducted, and the results of the test. S/he will identify the Test Report.</li> </ul> | <ul style="list-style-type: none"> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> <li>• Photographs of the seized dangerous drugs and/or controlled precursor and essential chemicals;</li> <li>• Photographs taken during the marking and inventory of the seized items;</li> <li>• Request for Laboratory Examination;</li> <li>• Chemistry Report;</li> <li>• Booking/Information of the arrested suspects;</li> <li>• Photographs or mug shots of the arrested suspects;</li> <li>• Mode of conveyance; and</li> <li>• Other documents like official receipt of the vehicle, bill of</li> </ul> |

<sup>14</sup> Section 3[iii], Article I, RA 9165.

<sup>15</sup> See People v. Ventura y Natividad, G.R. No. 184957, October 27, 2009, 619 Phil 536-557.

<sup>16</sup> Section 3 [jj], Article I, RA 9165.



| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS       |
|---|--------------------------------|--|
| <p>other means, or of committing any act of indispensable assistance to a person in administering a dangerous drug to himself/herself unless administered by a duly licensed practitioner for purposes of medication.<sup>17</sup></p> <p><b>Deliver</b> – Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.<sup>18</sup></p> |                                | <p>of the vehicle, bill of lading.</p> |
| <p><b>Elements for Delivery</b></p> <ul style="list-style-type: none"> <li>• The accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means;</li> <li>• Such delivery is not authorized by law; and</li> <li>• The accused knowingly made the delivery.</li> </ul>  |                                |  |

<sup>17</sup> Section 3[a], Article I, RA 9165.

<sup>18</sup> Section 3[k], Article I, RA 9165.

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|---|--|
| <p>Worthy of note is that the delivery may be committed even without consideration.<sup>19</sup></p> <p><b>Dispense</b> – Any act of giving away, selling or distributing medicine or any dangerous drug with or without the use of prescription.<sup>20</sup></p>                                  |   |  |
| <p><b>Element for Transportation:</b></p> <p>The essential element of the charge is the movement of the dangerous drug from one place to another.</p> <p><b>Transport</b> as used under the Dangerous Drugs Act is defined to mean “to carry or convey from one place to another.”<sup>21</sup></p> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the arresting officer who will testify on the recovery of the drugs from the possession of the accused, the seizing, marking, photographing, and inventory and custody of the seized drugs and the fact that the accused had no authority to possess said drugs;</li> <li>• Testimony of the chemist who will testify and identify the seized drug, the test conducted, and the results of the test. S/he will identify the</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit or Sworn Statement of seizing officer or undercover agent, whenever applicable;</li> <li>• Affidavit or Sworn Statement of Arresting Officer;</li> <li>• Affidavit or Sworn Statement of Investigator, whenever applicable;</li> <li>• Certification from Compliance Service;</li> </ul> |

<sup>19</sup> See People v. Maongco, G.R. No. 196966, October 23, 2013.

<sup>20</sup> Section 3[m], Article I, RA 9165.

<sup>21</sup> See People v. Samanoding, G.R. No. 199938, January 28, 2013.

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--------------------|--|--|
|                    | <p>Test Report.</p> <ul style="list-style-type: none"> <li>• Testimony of the Investigator, whenever applicable, who conducted, or was a part of the team conducted, or was a part of the team who conducted a backtracking investigation on the matter, collection and collation of evidence, and the preparation of documents relative to the filing of the case;</li> <li>• Testimony of the chemist who will testify and identify the seized dangerous drugs, CPECs, the test conducted, and the results of the test. The chemist will identify the Test Report.</li> <li>• Testimony of the Dangerous Drugs Regulatory Officer of the Compliance Service who will testify on the presence or absence</li> </ul> | <ul style="list-style-type: none"> <li>• Certificate of Coordination;</li> <li>• Photographs of the dangerous drugs or CPECs;</li> <li>• Mode of conveyance;</li> <li>• Inventory Sheet;</li> <li>• Request for Laboratory Examination;</li> <li>• Chain of Custody Form;</li> <li>• Acknowledgment Receipt;</li> <li>• Chemistry Report;</li> <li>• Arrest and Booking Sheet;</li> <li>• Photographs or mug shots of Drug Suspect/s</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Application for Search Warrant, whenever applicable;</li> <li>• Search Warrant, whenever applicable;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|--|---|
|   | <p>of the S or P License and Permit of the drug suspect; and</p> <ul style="list-style-type: none"> <li>• Testimony of two (2) insulating witnesses.</li> </ul>  | <p>whenever applicable; and</p> <ul style="list-style-type: none"> <li>• Certificate of Orderly Search, whenever applicable.</li> </ul>   |
| <p><b>Elements of Trading (Using Electronic Devices)</b></p> <ul style="list-style-type: none"> <li>• There was a transaction involving the trafficking of dangerous drugs or CPECs, (i.e. cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation, and possession);</li> <li>• The transaction was facilitated or consummated using electronic devices.</li> <li>• There was a transaction involving the trafficking</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizure, confiscation, and processing (marking, taking of photographs, and inventory) of the dangerous drugs or CPECs;</li> <li>• Testimony of the Arresting Officer who will testify on the circumstances surrounding the apprehension, reading of the Miranda Rights, and the processing (booking, medical examination, drug testing) of the drug suspect;</li> <li>• Testimony of the Investigator,</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter</li> <li>• Affidavit or Sworn Statement of Seizing Officer or Poseur Buyer;</li> <li>• Affidavit or Sworn Statement of Arresting Officer;</li> <li>• Affidavit or Sworn Statement of Investigator;</li> <li>• Certification from the Compliance Service;</li> <li>• Certificate of Coordination;</li> <li>• Photographs of the dangerous drugs or CPECs;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|---|---|
| <p>of dangerous drugs or CPECs, (i.e. cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation, and possession);</p> <ul style="list-style-type: none"> <li>The transaction was facilitated or consummated using electronic devices.</li> </ul> | <p>whenever applicable, who conducted, or was a part of the team who conducted, a backtracking investigation on the matter, collection and collation of evidence, and the preparation of documents relative to the filing of the case;</p> <ul style="list-style-type: none"> <li>Testimony of the chemist who will testify and identify the seized dangerous drugs, CPECs, the test conducted, and the results of the test. The chemist will identify the Test Report.</li> <li>Testimony of the Digital Forensics Examiner who will testify on the forensic examination of the digital devices;</li> <li>Testimony of the Dangerous Drugs Regulatory Officer of the Compliance Service who will testify on the</li> </ul> | <ul style="list-style-type: none"> <li>Inventory Sheet;</li> <li>Request for Laboratory Examination;</li> <li>Chain of Custody Form;</li> <li>Acknowledgement Receipt;</li> <li>Chemistry Report;</li> <li>Arrest and Booking Sheet;</li> <li>Photographs or mug shots of Drug Suspect;</li> <li>Digital Forensic Examination whenever applicable;</li> <li>Digital Devices;</li> <li>Photographs of Digital Devices;</li> <li>Transaction Records.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>Application for Search Warrant, whenever applicable;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|---|--|
| <p><b>Elements of Trading (Acting as a Broker)</b></p> <ul style="list-style-type: none"> <li>There must be a transaction involving the trafficking of dangerous drugs or CPECs, i.e. cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation, and possession;<sup>22</sup></li> <li>The transaction was facilitated or consummated using electronic devices;</li> </ul> | <p>presence or absence of the S or P License and Permit of the drug suspect;</p> <ul style="list-style-type: none"> <li>Testimony of the two (2) insulating witnesses</li> </ul> <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>Testimony of the Seizing Officer who will testify on the seizure, confiscation, and processing (marking, taking of photographs, and inventory) of the dangerous drugs or CPECs;</li> <li>Testimony of the Arresting Officer who will testify on the circumstances surrounding the apprehension, reading of the Miranda Rights, and the processing (booking, medical examination, drug testing) of the drug suspect;</li> </ul> | <p>whenever applicable;</p> <ul style="list-style-type: none"> <li>Search Warrant, whenever applicable; and</li> <li>Certificate of Orderly Search, whenever applicable.</li> </ul> <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>Complaint or Referral Letter</li> <li>Affidavit or Sworn Statement of Seizing Officer or Poseur Buyer;</li> <li>Affidavit or Sworn Statement of Arresting Officer;</li> <li>Affidavit or Sworn Statement of Investigator, whenever applicable;</li> <li>Certification from the Compliance Service;</li> <li>Certificate of Coordination;</li> </ul> |

<sup>22</sup> Section 3 (jj) of RA 9165.

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|--|--|
| <ul style="list-style-type: none"> <li>The accused brokered or facilitated the commission of any of the transactions mentioned; and</li> <li>Whether for money or other consideration.<sup>23</sup></li> </ul> | <ul style="list-style-type: none"> <li>Testimony of the Investigator, whenever applicable, who conducted, or was a part of the team who conducted, a backtracking investigation on the matter, collection and collation of evidence, and the preparation of documents relative to the filing of the case;</li> <li>Testimony of the chemist who will testify and identify the seized dangerous drugs, CPECs, the test conducted, and the results of the test. The chemist will identify the Test Report;</li> <li>Testimony of the Digital Forensics Examiner who will testify on the forensic examination of the digital devices;</li> <li>Testimony of the Dangerous Drugs Regulatory Officer of the Compliance</li> </ul> | <ul style="list-style-type: none"> <li>Photographs of the dangerous drugs or CPECs;</li> <li>Inventory Sheet;</li> <li>Request for Laboratory Examination;</li> <li>Chain of Custody Form;</li> <li>Acknowledgement Receipt;</li> <li>Chemistry Report;</li> <li>Arrest and Booking Sheet;</li> <li>Photographs or mug shots of Drug Suspect;</li> <li>Digital Forensic Examination whenever applicable;</li> <li>Digital Devices;</li> <li>Photographs of Digital Devices;</li> <li>Transaction Records.</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|---|---|
|   | <p>Service who will testify on the presence or absence of the S or P License and Permit of the drug suspect; and</p> <ul style="list-style-type: none"> <li>Testimony of the two (2) insulating witnesses</li> </ul>  | <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>Application for Search Warrant, whenever applicable;</li> <li>Search Warrant, whenever applicable; and</li> <li>Certificate of Orderly Search, whenever applicable.</li> </ul>   |
| <p><b>Elements of Administration</b></p> <ul style="list-style-type: none"> <li>A dangerous drug or CPEC was introduced into the body of any person with or without his knowledge by injection, inhalation, ingestion or any other means, or of committing any act of assistance to a person in administering a dangerous drug to himself/herself; and</li> <li>The person who administered the dangerous drug</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>Testimony of the victim</li> <li>Testimony of the Seizing Officer who will testify on the seizure, confiscation, and processing (marking, taking of photographs, and inventory) of the dangerous drugs or CPECs;</li> <li>Testimony of the Arresting Officer who will testify on the circumstances surrounding the apprehension, reading</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>Complaint or Referral Letter</li> <li>Affidavit or Sworn Statement of Seizing Officer or Undercover Agent, whenever applicable;</li> <li>Affidavit or Sworn Statement of Arresting Officer;</li> <li>Affidavit or Sworn Statement of Investigator, whenever applicable;</li> <li>Certification from</li> </ul> |

<sup>23</sup> Ibid.

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|---|--|
| has no authority to administer the same. <sup>24</sup> Certificate of Orderly Search, whenever applicable. | <p>of the Miranda Rights, and the processing (booking, medical examination, drug testing) of the drug suspect;</p> <ul style="list-style-type: none"> <li>• Testimony of the Investigator, whenever applicable, who conducted, or was a part of the team who conducted, a backtracking investigation on the matter, collection and collation of evidence, and the preparation of documents relative to the filing of the case;</li> <li>• Testimony of the chemist who will testify and identify the seized dangerous drugs, CPECs, the test conducted, and the results of the test. The chemist will identify the Test Report;</li> <li>• Testimony of the Dangerous Drugs Regulatory Officer</li> </ul> | <p>the Compliance Service;</p> <ul style="list-style-type: none"> <li>• Certificate of Coordination;</li> <li>• Photographs of the dangerous drugs or CPECs;</li> <li>• Inventory Sheet;</li> <li>• Request for Laboratory Examination;</li> <li>• Chain of Custody Form;</li> <li>• Acknowledgement Receipt;</li> <li>• Chemistry Report;</li> <li>• Arrest and Booking Sheet;</li> <li>• Photographs or mug shots of Drug Suspect;</li> <li>• Medico-Legal Report, in case there is a victim.</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|---|---|
|  | <p>of the Compliance Service who will testify on the presence or absence of the S or P License and Permit of the drug suspect; and</p> <ul style="list-style-type: none"> <li>• Testimony of the two (2) insulating witnesses</li> </ul>  | <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Application for Search Warrant, whenever applicable;</li> <li>• Search Warrant, whenever applicable; and</li> <li>• Certificate of Orderly Search, whenever applicable.</li> </ul>   |
| <b>Elements of Dispensation</b>  | <b>Testimonial:</b>   | <b>Documentary</b>  |
| <ul style="list-style-type: none"> <li>• A dangerous drug or CPEC was given away, sold, or distributed;</li> <li>• The person who gave away, sold, or distributed the dangerous drug or CPEC has no authority to do so; and</li> <li>• The dispensation was made with or without the use of prescription.</li> </ul> | <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizure, confiscation, and processing (marking, taking of photographs, and inventory) of the dangerous drugs or CPECs;</li> <li>• Testimony of the Arresting Officer who will testify on the circumstances surrounding the apprehension, reading</li> </ul> | <ul style="list-style-type: none"> <li>• Complaint or Referral Letter</li> <li>• Affidavit or Sworn Statement of Seizing Officer or Undercover Agent, whenever applicable;</li> <li>• Affidavit or Sworn Statement of Arresting Officer;</li> <li>• Affidavit or Sworn Statement of Investigator, whenever applicable;</li> </ul> |

24 Section 3 (jj) of RA 9165.

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--------------------|---|---|
|                    | <p>of the Miranda Rights, and the processing (booking, medical examination, drug testing) of the drug suspect;</p> <ul style="list-style-type: none"> <li>• Testimony of the Investigator, whenever applicable, who conducted, or was a part of the team who conducted, a backtracking investigation on the matter, collection and collation of evidence, and the preparation of documents relative to the filing of the case;</li> <li>• Testimony of the chemist who will testify and identify the seized dangerous drugs, CPECs, the test conducted, and the results of the test. The chemist will identify the Test Report;</li> <li>• Testimony of the Dangerous Drugs Regulatory Officer</li> </ul> | <ul style="list-style-type: none"> <li>• Certification from the Compliance Service;</li> <li>• Certificate of Coordination;</li> <li>• Photographs of the dangerous drugs or CPECs;</li> <li>• Inventory Sheet;</li> <li>• Request for Laboratory Examination;</li> <li>• Chain of Custody Form;</li> <li>• Acknowledgement Receipt;</li> <li>• Chemistry Report;</li> <li>• Arrest and Booking Sheet;</li> <li>• Photographs or mug shots of Drug Suspect.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Application for Search Warrant, whenever applicable;</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--|---|
|  | <p>Service who will testify on the presence or absence of the S or P License and Permit of the drug suspect; and</p> <ul style="list-style-type: none"> <li>• Testimony of the two (2) insulating witnesses</li> </ul>   | <p>applicable; and</p> <ul style="list-style-type: none"> <li>• Certificate of Orderly Search, whenever applicable.</li> </ul>  |
| <b>Elements of Delivery</b>  | <b>Testimonial:</b>  | <b>Documentary</b>  |
| <ul style="list-style-type: none"> <li>• The accused passed the possession of a dangerous drug to another, personally or otherwise, and by any means;</li> <li>• Such delivery is not authorized by law; and</li> <li>• The accused knowingly made the delivery with or without consideration.<sup>25</sup></li> </ul> | <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizure, confiscation, and processing (marking, taking of photographs, and inventory) of the dangerous drugs or CPECs;</li> <li>• Testimony of the Arresting Officer who will testify on the circumstances surrounding the apprehension, reading of the Miranda rights and the processing (booking, medical examination, drug testing) of the drug suspect;</li> </ul> | <ul style="list-style-type: none"> <li>• Complaint or Referral Letter</li> <li>• Affidavit or Sworn Statement of Seizing Officer or Undercover Agent, whenever applicable;</li> <li>• Affidavit or Sworn Statement of Arresting Officer;</li> <li>• Affidavit or Sworn Statement of Investigator, whenever applicable;</li> <li>• Certification from the Compliance Service;</li> <li>• Certificate of Coordination;</li> </ul> |

<sup>25</sup> See People v. Carrera, G.R. No. 215731, September 2, 2015.

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--------------------|--|--|
|                    | <ul style="list-style-type: none"> <li>• Testimony of the Investigator, whenever applicable, who conducted, or was a part of the team who conducted, a backtracking investigation on the matter, collection and collation of evidence, and the preparation of documents relative to the filing of the case;</li> <li>• Testimony of the chemist who will testify and identify the seized dangerous drugs, CPECs, the test conducted, and the results of the test. The chemist will identify the Test Report;</li> <li>• Testimony of the Dangerous Drugs Regulatory Officer of the Compliance Service who will testify on the presence or absence of the S or P License and Permit of the drug suspect; and</li> </ul> | <ul style="list-style-type: none"> <li>• Photographs of the dangerous drugs or CPECs;</li> <li>• Inventory Sheet;</li> <li>• Request for Laboratory Examination;</li> <li>• Chain of Custody Form;</li> <li>• Acknowledgement Receipt;</li> <li>• Chemistry Report;</li> <li>• Arrest and Booking Sheet;</li> <li>• Photographs or mug shots of Drug Suspect.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Application for Search Warrant, whenever applicable;</li> <li>• Search Warrant, whenever applicable; and</li> <li>• Certificate of Orderly Search, whenever</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|--|--|
|   | <ul style="list-style-type: none"> <li>• Testimony of the two (2) insulating witnesses</li> </ul>  | <p>Search, whenever applicable.</p>  |
| <p><b>Elements of Prima Facie Proof of Manufacture of Dangerous Drugs</b></p> <ul style="list-style-type: none"> <li>• CPECs or laboratory equipment are found in a clandestine laboratory;</li> <li>• The person who owns, manages, or possesses the clandestine laboratory has no authority to possess CPECs and manufacture dangerous drugs; and</li> <li>• The laboratory has been certified as clandestine by the Laboratory Service of PDEA.</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizure, confiscation, and processing (marking, taking of photographs, and inventory) of the dangerous drugs or CPECs;</li> <li>• Testimony of the Arresting Officer who will testify on the circumstances surrounding the apprehension, reading of the Miranda rights and the processing (booking, medical examination, drug testing) of the drug suspect;</li> <li>• Testimony of the Investigator, whenever applicable, who conducted, or was a part of the team who conducted,</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter</li> <li>• Affidavit or Sworn Statement of Seizing Officer;</li> <li>• Affidavit or Sworn Statement of Arresting Officer;</li> <li>• Affidavit or Sworn Statement of Investigator, whenever applicable;</li> <li>• Certification from the Compliance Service;</li> <li>• Certificate of Coordination;</li> <li>• Certification from the Laboratory Service;</li> <li>• Photographs of the dangerous drugs or CPECs;</li> </ul> |

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--------------------|--|---|
|                    | <p>a backtracking investigation on the matter, collection and collation of evidence, and the preparation of documents relative to the filing of the case;</p> <ul style="list-style-type: none"> <li>• Testimony of the chemist who will testify and identify the seized dangerous drugs, CPECs, the test conducted and the results of the test. The chemist will identify the Test Report;</li> <li>• Testimony of the Dangerous Drugs Regulatory Officer of the Compliance Service who will testify on the presence or absence of the S or P License and Permit of the drug suspect; and</li> <li>• Testimony of the two (2) insulating witnesses</li> </ul> | <ul style="list-style-type: none"> <li>• Inventory Sheet;</li> <li>• Request for Laboratory Examination;</li> <li>• Chain of Custody Form;</li> <li>• Acknowledgement Receipt;</li> <li>• Chemistry Report;</li> <li>• Arrest and Booking Sheet;</li> <li>• Photographs or mug shots of Drug Suspect</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Application for Search Warrant, whenever applicable;</li> <li>• Search Warrant, whenever applicable; and</li> <li>• Certificate of Orderly Search, whenever applicable.</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|--|--|
| <p><b>Section 6. Maintenance of a Den, Dive or Resort.</b></p> <p><b>Elements:</b></p> <p><b>Offenders:</b></p> <p><i>Maintainer:</i></p> <ul style="list-style-type: none"> <li>• Accused is maintaining a den where any dangerous drug is administered, used, or sold; and</li> <li>• The alleged drug den is a place where dangerous drugs are regularly sold to and/or used by customers of the maintainer of the den.<sup>26</sup></li> </ul> <p><i>Owner:</i></p> <ul style="list-style-type: none"> <li>• The accused is the owner of the den, dive or resort (even if not the maintainer); and</li> <li>• Intentionally uses his property as a den, dive or resort.</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that (a) the place is a den or a place where any controlled precursor and essential chemical is used or sold in any form and (b) the accused maintains the place;</li> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, and inventory and custody of the seized drugs;</li> <li>• Testimony of the chemist who will testify and identify the seized drug, the test conducted, and the results of the test. S/he will identify the Test Report.</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination (when applicable);</li> <li>• The dangerous drugs and/ or controlled precursor and essential chemicals;</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> <li>• Photographs of the seized dangerous drugs and/or controlled precursor and essential chemicals;</li> <li>• Photographs taken during the marking and inventory of the seized items;</li> </ul> |

<sup>26</sup> See People v. Ramil Galicia y Chavez, (G.R. No. 218402 February 14, 2018).



| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|--|---|
| <p><i>Financier, Manager, Organizer, Maintainer:</i></p> <ul style="list-style-type: none"> <li>The place is a den, dive or resort where dangerous drugs are regularly sold to and/ or used by customers of the maintainer of the den; and</li> <li>The accused finances, manages or organizes any of the illegal activities in the den, dive or resort.</li> </ul> |  | <ul style="list-style-type: none"> <li>Request for Laboratory Examination;</li> <li>Chemistry Report;</li> <li>Booking/Information of the arrested suspects; and</li> <li>Photographs or mug shots of the arrested suspects.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>Application for Search Warrant, whenever applicable;</li> <li>Search Warrant, whenever applicable; and</li> <li>Certificate of Orderly Search, whenever applicable.</li> </ul> |
| <p><b>Section 7. Employees and Visitors of a Den, Dive or Resort.</b></p> <p><b>Employees</b></p> <ul style="list-style-type: none"> <li>Accused is an employee of the</li> </ul>   | <p><b>Employees Testimonial:</b></p> <ul style="list-style-type: none"> <li>Witness/es who will testify that (a) the place is a den or a place where any controlled precursor</li> </ul> | <p><b>Employees</b></p> <ul style="list-style-type: none"> <li>Affidavit of witness/es; and</li> <li>Affidavit of the Arresting Officer/s.</li> </ul>   |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|--|--|
| <p>maintainer, owner and/ or operator of a den, dive or resort in connection with the operation thereof;</p> <ul style="list-style-type: none"> <li>S/he is aware that the place is a den, dive or resort; and</li> <li>S/he acts with or without compensation.<sup>27</sup></li> </ul> <p><b>Visitors</b></p> <ul style="list-style-type: none"> <li>S/he or she knew that the place visited was a drug den, dive or resort; and</li> <li>S/he or she nonetheless visited the place despite this knowledge.<sup>28</sup></li> </ul> | <p>and essential chemical is used or sold in any form and (b) the accused maintains the place;</p> <ul style="list-style-type: none"> <li>Witness/es who will testify that (a) the accused is an employee of the maintainer, owner, and/ or operator of a den, dive or resort in connection with the operation thereof, (b) the accused is aware of the nature of the place, and (c) s/he acts with or without compensation.</li> </ul> <p><b>Visitors</b></p> <ul style="list-style-type: none"> <li>Witness/es who will testify that (a) the place is a den or a place where any controlled precursor and essential chemical is used or sold in any form and (b) the accused maintains the place;</li> <li>Witness/es who</li> </ul> | <p><b>Visitors</b></p> <ul style="list-style-type: none"> <li>Affidavit of witness/es; and</li> <li>Affidavit of the Arresting Officer/s.</li> </ul> |

<sup>27</sup> Special Penal Laws, Vol II by Judge Marlo Campanilla, 2010, p. 38.

<sup>28</sup> See Medel Coronel y Santillan et. al. v. People, G.R. No. 214536, March 13, 2017.

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|--|---|
|   | <p>will testify that the accused who, not being a maintainer or employee of a den, dive, or resort, is aware of the place as such and shall knowingly visit the same.</p>  |   |
| <p><b>Section 8.</b><br/><i>Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.</i></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• A person engages in the manufacture of dangerous drugs and/or controlled precursor and essential chemicals; and</li> <li>• This person acts without being authorized by law.</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, and inventory, and custody of the seized dangerous drugs and/or controlled precursor and essential chemicals and non-drug evidence;</li> <li>• Testimony of the required witness/es under Sec. 21, RA 9165, as amended, who will testify on their presence immediately after the seizure and confiscation of the illegal drugs and during the conduct</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• Affidavit of witness/es;</li> <li>• PDEA Certificate of Coordination (when applicable);</li> <li>• Certification from the Laboratory Service, PDEA (Clandestine Laboratory);</li> <li>• The dangerous drugs and/ or controlled precursor and</li> </ul> |

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--------------------|---|---|
|                    | <p>of the photographing and inventory, and that they signed the inventory;<sup>29</sup></p> <ul style="list-style-type: none"> <li>• Testimony of the Arresting Officer (when applicable) who will testify on the arrest of respondent/s;</li> <li>• Testimony of the Investigator or Evidence Custodian who will testify on the custody of the seized non-drug evidence; and</li> <li>• Testimony of the chemist who will testify and identify the seized drug, the test conducted, and the results of the test. S/he will identify the Chemistry Report.</li> </ul> | <p>essential chemicals;</p> <ul style="list-style-type: none"> <li>• Spot Report, if any;</li> <li>• Tools, instruments, or equipment used in the production, preparation, compounding, or processing of dangerous drugs and/or controlled precursor and essential chemicals or materials for packaging or labeling materials to be used as the container of dangerous drugs and/or controlled precursor and essential chemicals or apparatuses;</li> <li>• Digital or electronic evidence;</li> <li>• Photographs of the seized dangerous drug and/or controlled precursor, essential chemical, and non-drug evidence;</li> <li>• Photographs of the crime scene;</li> </ul> |

<sup>29</sup> See People v. Jennifer Ga-a, G.R. No. 222559, June 6, 2018.

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--------------------|--------------------------------|---|
|                    |                                | <ul style="list-style-type: none"> <li>• Photographs taken during the marking and inventory of the seized items;</li> <li>• Inventory Sheet;</li> <li>• Chain of Custody Form;</li> <li>• Request for Laboratory Examination;</li> <li>• Chemistry Report;</li> <li>• Booking/Information of arrested suspects;</li> <li>• Photographs or mug shots of arrested suspect/s;</li> <li>• Search Warrant (when applicable), preferably with a copy of the Application for Search Warrant together with the attached documents containing information, such as the exact address of place to be searched, specific statement of facts and items to be</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--|---|
|  |  | <ul style="list-style-type: none"> <li>seized, surveillance or casing report, sketch and pictures of the place to be searched, and description or pictures of subject persons;</li> <li>• Return of the Search Warrant;</li> <li>• Video recording and/or photographs of the implementation of the Search Warrant; and</li> <li>• Certificate of Orderly Search already incorporated in the affidavit of law enforcer.</li> </ul> |
| <p><b>Section 9. <i>Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals.</i></b></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• The accused is a licensed person or entity by the</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, inventory, and custody of the seized controlled precursor and essential</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> </ul>   |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|---|--|
| <p>PDEA to import or manufacture; and</p> <ul style="list-style-type: none"> <li>S/he sold, distributed, supplied or transported a legitimately acquired controlled precursors or chemicals to any person or entity engaged in the manufacture of dangerous drugs.</li> </ul> | <p>chemicals and non-drug evidence;</p> <ul style="list-style-type: none"> <li>Testimony of the required witness/es under Sec. 21 of RA 9165 who will testify on their presence immediately after the seizure and confiscation of the illegal drugs and during the conduct of the photographing and inventory, and that they signed the inventory;<sup>30</sup></li> <li>Testimony of the Arresting Officer (when applicable) who will testify on the arrest of respondent/s;</li> <li>Testimony of the Investigator or Evidence Custodian who will testify on the custody of the seized non-drug evidence; and</li> <li>Testimony of the chemist who will testify and identify the seized drug, the</li> </ul> | <ul style="list-style-type: none"> <li>Affidavit of witness/es;</li> <li>PDEA Certificate of Coordination (when applicable);</li> <li>Spot Report, if available;</li> <li>The dangerous drugs and/ or controlled precursor and essential chemicals;</li> <li>Digital or electronic evidence;</li> <li>Record books;</li> <li>PDEA Permit;</li> <li>PDEA License;</li> <li>PDEA accreditation as transporter/hauler/carrier of bulk controlled substance;</li> <li>Chain of Custody Form;</li> <li>Inventory Sheet;</li> <li>Photographs of the seized dangerous</li> </ul> |

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--------------------|--|---|
|                    | <p>test conducted, and the results of the test. S/he will identify the Chemistry Report.</p> | <p>drug and/or controlled precursor and essential chemical;</p> <ul style="list-style-type: none"> <li>Photographs of the non-drug seized items;</li> <li>Photographs taken during the marking and inventory of the seized items;</li> <li>Chemistry Report.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>Search Warrant (preferably with a copy of the Application);</li> <li>Return of the Search Warrant;</li> <li>Video recording of the implementation of the search warrant (if available); and</li> <li>Certificate of Orderly Search.</li> </ul> |

<sup>30</sup> See People v. Jennifer Ga-a, G.R. No. 222559, June 6, 2018.

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|--|--|
| <p><b>Section 10.</b><br/><i>Manufacture or Delivery of Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.</i></p> <p><b>Elements (Section 10, 1st paragraph):</b></p> <ul style="list-style-type: none"> <li>• The accused delivers, possesses with intent to deliver, or manufactures with intent to deliver;</li> <li>• Any equipment, instrument, apparatus and other paraphernalia for dangerous drugs; and</li> <li>• The accused knows, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, inventory, and custody of the seized equipment, instrument, apparatus, and paraphernalia for dangerous drugs;</li> <li>• Testimony of the required witness/es under Sec. 21, RA 9165, as amended, who will testify on their presence immediately after the seizure and confiscation of the non-drug evidence; and</li> <li>• Testimony of the Arresting Officer (when applicable) who will testify on the arrest of respondent/s.</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• Affidavit of witness/es;</li> <li>• PDEA Certificate of Coordination (when applicable);</li> <li>• Spot Report, if available;</li> <li>• The dangerous drugs and/or controlled precursor and essential chemicals;</li> <li>• Digital or electronic evidence;</li> <li>• Record books;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> <li>• Photographs of the</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--------------------------------|---|
| <p>prepare, test, analyze, pack, repack, store, contain, or conceal any dangerous drugs and/or controlled precursor and essential chemical.</p> <p><b>Elements (Section 10, 2nd paragraph):</b></p> <ul style="list-style-type: none"> <li>• The accused commits the acts under paragraph 1 (Sec 10); and</li> <li>• The purpose is to inject, ingest, inhale or otherwise introduce into the human body a dangerous drug.</li> </ul> <p><b>Aggravating Circumstance:</b></p> <ul style="list-style-type: none"> <li>• The accused delivers any equipment, instrument, apparatus, and other paraphernalia for dangerous drugs using a minor or a mentally incapacitated person.</li> </ul> |                                | <p>non-drug seized items; and</p> <ul style="list-style-type: none"> <li>• Photographs taken during the marking and inventory of the seized items.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation of the search warrant (if available); and</li> <li>• Certificate of Orderly Search.</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--|---|
| <p><b>Section 11.</b><br/>Possession of Dangerous Drugs.</p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• The accused is in possession of an item or object, which is identified as a dangerous drug and those similarly designed or newly introduced drugs and their derivatives, without any therapeutic value or if the quantity possessed is far beyond therapeutic requirements;</li> <li>• Such possession is not authorized by law; and</li> <li>• The accused freely and consciously possessed the drug.<sup>31</sup></li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Confiscating or Seizing Officer who will testify on the seizing and marking of seized dangerous drugs;</li> <li>• Police Officer/s who will testify on the photographing, inventory, and custody of the seized drugs; and</li> <li>• Testimony of the chemist who will testify and identify the seized drug, the test conducted, and the results of the test. S/he will identify the Chemistry Report.</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing/ Confiscating Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• Affidavit of the Investigator;</li> <li>• Search Warrant (when applicable);</li> <li>• PDEA Coordination Form and Pre-Operation Report (when applicable);</li> <li>• The dangerous drug/s;</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory of Seized/ Confiscated Items;</li> <li>• Photographs of the seized dangerous drug/s;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|---|--|
| <p><b>Section 12.</b><br/><i>Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.</i></p> <p><b>Element:</b></p> <ul style="list-style-type: none"> <li>• Possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug.</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, and inventory and custody of the seized paraphernalia. S/he will identify pieces of object and documentary evidence. S/he will also identify the accused; and</li> <li>• Testimony of the chemist who will testify and identify the seized paraphernalia, the test conducted and</li> </ul> | <ul style="list-style-type: none"> <li>• Photographs taken during the marking and inventory of the seized items;</li> <li>• Request for Laboratory Examination;</li> <li>• Request for Drug Test; and</li> <li>• Chemistry Report.</li> </ul> <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination;</li> <li>• The Paraphernalia;</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> </ul> |

<sup>31</sup> See People v. Santos, G.R. No. 223142, January 17, 2018.

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS                                      | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--------------------|---|---|
|                    | <p>the results of the test. S/he will identify the Test Report.</p> | <p>Photographs of the seized paraphernalia;</p> <ul style="list-style-type: none"> <li>• Photographs taken during the marking and inventory of the seized items;</li> <li>• Request for Laboratory Examination;</li> <li>• Chemistry Report;</li> <li>• Booking/Information of Arrested Suspects; and</li> <li>• Photographs or mug shots of Arrested Suspect/s.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation of the search warrant (if available); and</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|---|---|
| <p><b>Section 13. Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings.</b></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• The offender is in possession of an item or object, which is identified to be a dangerous drug;</li> <li>• Such possession is not authorized by law;<sup>32</sup></li> <li>• The accused freely and consciously possessed the dangerous drug; and</li> <li>• Possession is during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons.<sup>33</sup></li> </ul> | <p>the results of the test. S/he will identify the Test Report.</p> <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, and inventory and custody of the seized drugs. S/he will identify pieces of object and documentary evidence. S/he will also identify the accused;</li> <li>• Any other witness/es who will testify that the possession occurred during parties, social gatherings, or meetings or in the proximate company of at least two (2) persons; and</li> <li>• Testimony of the chemist who will testify and identify the seized drugs, the test conducted and</li> </ul> | <ul style="list-style-type: none"> <li>• Certificate of Orderly Search.</li> </ul> <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination (when applicable);</li> <li>• Search warrant (when applicable), preferably with a copy of the application;</li> <li>• The dangerous drugs and/or controlled precursor and essential chemicals;</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> </ul> |

<sup>32</sup> See People v. Crispian Merced Lumaya, G.R. No. 231983, March 7, 2018.

<sup>33</sup> See People v. Arnold Martinez, et al., G.R. No. 191366, December 13, 2010.

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|---|--|
|   | <p>the results of the test. S/he will identify the Test Report.</p>   | <ul style="list-style-type: none"> <li>• Inventory Sheet;</li> <li>• Photographs of the seized dangerous drugs and/or controlled precursor and essential chemicals;</li> <li>• Photographs taken during the marking and inventory of the seized items;</li> <li>• Request for Laboratory Examination;</li> <li>• Chemistry Report;</li> <li>• Booking/Information of Arrested Suspects;</li> <li>• Photographs or mug shots of Arrested Suspect/s; and</li> <li>• Proof of the party, social gathering, or meeting.</li> </ul> |
| <p><b>Section 14.</b><br/><i>Possession of Equipment Instrument, Apparatus, and Other Paraphernalia for</i></p> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or referral letter;</li> </ul>  |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|--|--|
| <p><i>Dangerous Drugs During Parties, Social Gatherings or Meetings.</i></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• Possession or control by the accused of any equipment, apparatus, or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body;</li> <li>• Free and conscious possession of the equipment, apparatus, or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body by the accused;</li> </ul> | <p>seizing, marking, photographing, inventory, and custody of the seized equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body. S/he will identify pieces of object and documentary evidence. S/he will also identify the accused;</p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that the possession occurred during parties, social gatherings, or meetings, or in the proximate company of at least two (2) persons; and</li> <li>• Testimony of the chemist who will identify and testify that the equipment, apparatus or other</li> </ul> | <ul style="list-style-type: none"> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination (when applicable);</li> <li>• Search warrant (when applicable), preferably with a copy of the application;</li> <li>• The equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, the test conducted and the results of the test;</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> </ul> |



| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|---|---|
| <ul style="list-style-type: none"> <li>• Possession is during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons; and</li> <li>• Such possession is not authorized by law.</li> </ul> | <p>paraphernalia are fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, the test conducted, and the results of the test.</p> | <ul style="list-style-type: none"> <li>• Photographs of the seized equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body not authorized by law.</li> <li>• Photographs taken during the marking and inventory of the seized items;</li> <li>• Request for Laboratory Examination;</li> <li>• Chemistry Report, if applicable;</li> <li>• Booking/Information of arrested suspects;</li> <li>• Photographs or mug shots of arrested suspects; and</li> <li>• Photographs or videos of the party, social gathering or meetings.</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|---|--|
| <p><b>Section 15. Use of Dangerous Drugs.</b></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• Accused was arrested or apprehended for unlawful acts listed under RA 9165;</li> <li>• Accused was subjected to drug test; and</li> <li>• The confirmatory test shows that s/he used dangerous drugs.<sup>34</sup></li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that the accused was arrested or apprehended for unlawful acts listed under RA 9165; and</li> <li>• Testimony of the chemist who will testify on the drug test conducted and the results of the test. S/he will identify the Chemistry Report.</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination (when applicable);</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> <li>• Photographs taken during the marking and inventory of the seized items;</li> <li>• Request for Laboratory Examination;</li> <li>• Chemistry Report;</li> <li>• Booking/Information of arrested suspects; and</li> </ul> |

<sup>34</sup> See Jaime Dela Cruz v. People, G.R. 200748, July 23, 2014.

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|--|--|
| <p><b>Section 16.</b><br/><i>Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources thereof.</i></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• A person plants, cultivates or cultures marijuana, opium poppy or any other plant regardless of quantity, which is or may hereinafter be classified as a dangerous drug or as a source from which any dangerous drug may be manufactured or derived; and</li> <li>• This person acts without being authorized by law.</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Seizing Officer who will testify on the seizing, marking, photographing, inventory, and custody of the seized drug and drug evidence;</li> <li>• Testimony of the required witness/es under Section 21, RA 9165, as amended, who will testify on their presence immediately after the seizure and confiscation of the illegal drugs and during the conduct of the photographing and inventory, and that they signed the inventory;<sup>35</sup></li> <li>• Testimony of the Arresting Officer (when applicable) who will testify</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Photographs or mug shots of arrested suspect/s.</li> <li>• Complaint or Referral Letter;</li> <li>• Affidavit of Seizing Officer;</li> <li>• Affidavit of Arresting Officer;</li> <li>• PDEA Certificate of Coordination (when applicable);</li> <li>• Spot Report, if any;</li> <li>• Chain of Custody Form;</li> <li>• Inventory Sheet;</li> <li>• Photographs of the seized dangerous drug;</li> <li>• Photographs of the non-drug seized items;</li> <li>• Photographs taken during the marking and inventory of the</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|---|---|
| <p><b>Section 17.</b><br/><i>Maintenance and Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.</i></p> | <p>on the arrest of respondent/s;</p> <ul style="list-style-type: none"> <li>• Testimony of the Investigator or Evidence Custodian who will testify on the custody of the seized non-drug evidence; and</li> <li>• Testimony of the chemist who will testify and identify the seized drug, the test conducted, and the results of the test. S/he will identify the Chemistry Report.</li> </ul> <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the Arresting Officer (when applicable) who will testify on the arrest of respondent/s; and</li> <li>• Witness/es who</li> </ul> | <p>seized items;</p> <ul style="list-style-type: none"> <li>• Request for Laboratory Examination; and</li> <li>• Chemistry Report.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation of the search warrant (if available); and</li> <li>• Certificate of Orderly Search.</li> </ul> <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint Affidavit;</li> <li>• Affidavit of Arresting Officer;</li> <li>• Affidavit of witness/es;</li> </ul> |

<sup>35</sup> See People v Jennifer Ga-a, GR 222559, June 6, 2018.

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|--|--|
| <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• The accused is a licensed practitioner, manufacturer, wholesaler, importer, distributor, dealer, or retailer;</li> <li>• S/he violates or fails to comply with the maintenance and keeping of the original records of transactions on any dangerous drugs and/or controlled precursors and essential chemicals in accordance with Section 40 of RA 9165.</li> </ul> | <p>will testify on the violation or non-compliance with the maintenance and keeping of original records of transactions of dangerous drugs and/or CPECs.</p> | <ul style="list-style-type: none"> <li>• Affidavit of the Investigator;</li> <li>• Spot Report, if any;</li> <li>• Digital or electronic evidence;</li> <li>• License, registration, or permit of the respondent/ accused showing the s/he is a practitioner, manufacturer, wholesaler, importer, distributor, dealer, or retailer of dangerous drugs and/or controlled precursors and essential chemicals;</li> <li>• Record of sales, purchases, acquisitions, and deliveries of dangerous drugs, prescription for a dangerous drug, or record of all inventories, sales, purchases, and acquisitions; and</li> <li>• PDEA and/or DOH report.</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|---|---|
|  |   | <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation of the search warrant (if available); and</li> <li>• Certificate of Orderly Search.</li> </ul> |
| <p><b>Section 18. Unnecessary Prescription of Dangerous Drugs</b></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• The accused is a licensed practitioner who prescribes any dangerous drug;</li> <li>• The prescription is issued in favor of a person whose physical or physiological</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the witness/es.</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter;</li> <li>• Affidavit of Arresting Officer;</li> <li>• Affidavit of witness/es;</li> <li>• Affidavit of the Investigator (when applicable);</li> <li>• Spot Report, if any;</li> </ul>  |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|---|--|
| <ul style="list-style-type: none"> <li>• condition does not require the use of such dangerous drug or in the dosage prescribed; and</li> <li>• The accused has not acted in compliance with Section 40 of RA 9165.</li> </ul>   |   | <ul style="list-style-type: none"> <li>• Digital or electronic evidence;</li> <li>• License, registration, or permit of the accused showing that s/he is a practitioner, manufacturer, wholesaler, or importer;</li> <li>• Record of sales, purchases, acquisitions, and deliveries of dangerous drugs, prescription for a dangerous drug, or records of all inventories, sales, purchases, acquisitions, and deliveries;</li> </ul> |
| <p><b>Section 19. Unlawful Prescription of Dangerous Drugs</b></p> <p><b>Element:</b></p> <ul style="list-style-type: none"> <li>• The accused illegally makes or issues a prescription or any other writing purporting to be a prescription for any dangerous drug.</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the witness/es.</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter;</li> <li>• Affidavit of Arresting Officer;</li> <li>• Affidavit of witness/es;</li> <li>• Affidavit of the</li> </ul>   |

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--------------------|--------------------------------|--|
|                    |                                | <ul style="list-style-type: none"> <li>Investigator (when applicable);</li> <li>• Spot Report, if any;</li> <li>• Digital or electronic evidence;</li> <li>• License, registration, or permit of the respondent/ accused showing the s/he is a practitioner, manufacturer, wholesaler, importer, distributor, dealer, or retailer of dangerous drugs and/or controlled precursors and essential chemicals;</li> <li>• Record of sales, purchases, acquisitions, and deliveries of dangerous drugs, prescription for a dangerous drug, or records of all inventories, sales, purchases, acquisitions, and deliveries; and</li> <li>• PDEA and/or DOH report of non-compliance or</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|---|--|
|   |   | <p>non-compliance or violation of Section 40 of RA 9165 by the respondent/accused.</p> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation of the search warrant (if available); and</li> <li>• Certificate of Orderly Search.</li> </ul> |
| <p><b>Section 26.</b> Attempt or Conspiracy</p> <p><b>Elements of Conspiracy as a Crime (Section 26):</b></p> <ul style="list-style-type: none"> <li>• Two or more persons come to an agreement;</li> <li>• The agreement is to commit the</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify to the agreement of the offenders to commit any of the following offenses as defined in Section 26 of RA 9165.</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter; and</li> <li>• Affidavit of witness/es.</li> </ul>  |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--------------------------------|---|
| <ul style="list-style-type: none"> <li>• following offenses as defined in RA 9165: <ul style="list-style-type: none"> <li>◊ Sale, trading, administration, dispensation, delivery, distribution. And transportation of any dangerous drug and/or controlled precursor and essential chemical;</li> <li>◊ Maintenance of a den, dive or resort where any dangerous drug is used in any form;</li> <li>◊ Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and</li> <li>◊ Cultivation or culture of plants, which are sources of dangerous drugs.</li> </ul> </li> </ul> |                                | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter; and</li> <li>• Affidavit of witness/es.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation of the search warrant (if available); and</li> <li>• Certificate of Orderly Search.</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS |
|--|--------------------------------|----------------------------------|
| <ul style="list-style-type: none"> <li>• The offenders decide to commit the offense.<sup>36</sup></li> </ul> <p><b>Elements of Attempt:</b></p> <ul style="list-style-type: none"> <li>• That the offender commences the commission of any of the following unlawful acts directly by overt acts: <ul style="list-style-type: none"> <li>◊ Importation of any dangerous drugs and/or controlled precursor and essential chemical;</li> <li>◊ Sale, trading, administration, dispensation, delivery, distribution, and transportation</li> <li>◊ Maintenance of a den, dive or resort where any dangerous drug is used in any form;</li> <li>◊ Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and</li> </ul> </li> </ul> |                                |                                  |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|---|---|
| <ul style="list-style-type: none"> <li>◊ Cultivation or culture of plants which are sources of dangerous drugs</li> <li>• The offender does not perform all the acts of execution which should have produced any of the above enumerated unlawful acts; and</li> <li>• The reason for the non-performance of all the acts of execution is by some cause or accident other than the spontaneous desistance of the offender.<sup>37</sup></li> </ul> |   |   |
| <ul style="list-style-type: none"> <li>• <b>Section 27. Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous</b></li> </ul>  | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that the accused is a public office employee who has access or custody of the confiscated, seized, or surrendered dangerous drugs, plant sources of dangerous drugs,</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Appointment or Certificate of Employment of the accused;</li> <li>• Affidavit of witness/es;</li> <li>• Inventory Sheet of the subject confiscated, seized,</li> </ul> |

36 See De Lima v. Guerrero, G.R. No. 229781, October 10, 2017.

37 See People v. Figueroa, G.R. No. 186141, April 11, 2012 and People v. Laylo, G.R. No. 192235, July 6, 2011.

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS  | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|---|---|
| <p><i>Drugs, Controlled Precursors and Essential Chemicals, Instruments or Paraphernalia and/ or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed</i></p> <p><b>Elements (Section 27, 1st paragraph):</b></p> <ul style="list-style-type: none"> <li>• The accused is a public officer or employee;</li> <li>• The accused misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments or paraphernalia and/ or laboratory equipment, including the proceeds or properties obtained from the unlawful</li> </ul> | <p>CPECs, instruments, or paraphernalia and/or laboratory equipment, including the proceeds or properties obtained from the unlawful acts and that s/he misappropriated, misapplied, or failed to account for them.</p> | <p>or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments or paraphernalia and/ or laboratory equipment, if applicable;</p> <ul style="list-style-type: none"> <li>• Photographs of the confiscated, seized, or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments or paraphernalia and/ or laboratory equipment, including the proceeds or properties, if applicable;</li> <li>• Affidavit of Seizing Officer, if applicable;</li> <li>• Chain of Custody Form, if applicable;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|--|---|
| <p>acts as provided for in RA 9165.</p> <p><b>Elements (Section 27, 2nd paragraph):</b></p> <ul style="list-style-type: none"> <li>• An elective or national official</li> <li>• Found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, OR</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that the accused is an elected official who has benefited from the proceeds of the trafficking of dangerous drugs, or has received any financial or material contributions or</li> </ul> | <ul style="list-style-type: none"> <li>• Photographs or video recording, if applicable; and</li> <li>• Digital or electronic evidence.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation of the search warrant (if available).</li> <li>• Certificate of Orderly Search</li> </ul> <p><b>(Section 27, paragraph 2): Documentary:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter;</li> <li>• Duly signed oath-taking certificate of the accused or other proof that s/he was duly elected;</li> </ul> |

| TITLE AND ELEMENTS | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--------------------|--------------------------------|---|
|                    |                                | <ul style="list-style-type: none"> <li>• Affidavit of witness/es;</li> <li>• Statement of Assets, Liabilities and Net Worth and/or Anti-Money Laundering Council investigation report;</li> <li>• Land titles, condominium certificates of title, and/or bank records;</li> <li>• Stock certificates, vehicle registration documents, photographs, video recordings, and/or other digital or electronic evidence;</li> <li>• Certified True Copy of relevant decision.</li> </ul> <p><b>With Search Warrant (additional evidence)</b></p> <ul style="list-style-type: none"> <li>• Search Warrant (preferably with a copy of the Application);</li> <li>• Return of the Search Warrant;</li> <li>• Video recording of the implementation</li> </ul> |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--|---|
| <p>of the search warrant (if available); and</p> <ul style="list-style-type: none"> <li>• Certificate of Orderly Search.</li> </ul>  |  |   |
| <p><b>Section 29. Criminal Liability for Planting of Evidence</b></p> <p><b>Elements</b></p> <ul style="list-style-type: none"> <li>• The accused maliciously and surreptitiously inserts, places, adds, or attaches, directly or indirectly through any overt or covert act, whatever quantity of any dangerous drug and/or controlled precursor and essential chemicals in the person, house, effects, or in the immediate vicinity of an innocent individual; and</li> <li>• The accused commits the act for the purpose of implicating, incriminating, or</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that the accused maliciously and surreptitiously inserted, placed, added, or attached, directly or indirectly through any overt or covert act, whatever quantity of any dangerous drug and/or controlled precursor and essential chemicals in the person, house, effects, or in the immediate vicinity of an innocent individual.</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• Photographs or Video recording;</li> <li>• Digital or electronic evidence;</li> <li>• Dangerous drug and/or controlled precursor and essential chemicals;</li> <li>• Chemistry Report; and</li> <li>• Affidavit of witness/es.</li> </ul> |



| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|--|--|--|
| <p>imputing the commission of any violation of RA 9165.</p>  |  |  |
| <p><b>Section 32. Liability of a Person Violating Any Regulation Issued by the Board –</b></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• A person;</li> <li>• Violates any regulation duly issued by the Board;</li> </ul>  | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of witnesses who will testify on a particular DDB Regulation and that respondent/accused violated said DDB Regulation.</li> </ul>                            | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral Letter;</li> <li>• DDB Regulation;</li> <li>• Complaint Affidavit;</li> <li>• Affidavit of Witness; and</li> <li>• Digital or electronic evidence, when available or applicable.</li> </ul> |
| <p><b>Section 37. Issuance of False or Fraudulent Drug Test Results</b></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• The accused is a person authorized, licensed, or accredited under RA 9165 to conduct drug examination or test; and</li> <li>• The accused issued</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that the accused is authorized to conduct drug examination or test and that s/he issued a false or fraudulent drug test result.</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter;</li> <li>• Affidavit of a witness/es;</li> <li>• Authority, license, or accreditation of the accused;</li> <li>• False or fraudulent drug test result;</li> </ul>                   |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|--|--|---|
| <p>a false or fraudulent drug test result.</p>   |  | <ul style="list-style-type: none"> <li>• Confirmatory drug test result; and</li> <li>• Digital or electronic evidence.</li> </ul>   |
| <p><b>Section 91. Responsibility and Liability of Law Enforcement Agencies and other Government Officials and Employees in Testifying as Prosecution Witnesses in Dangerous Drugs Cases</b></p> <p><b>Elements:</b></p> <ul style="list-style-type: none"> <li>• The accused is a member of a law enforcement agency or a government official or employee; and</li> <li>• The accused, after due notice, fails or refuses, intentionally or negligently and without any valid reason, to appear as a witness for the prosecution in any proceedings, involving violations</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the prosecutor handling the case who will testify that the accused was a witness in the criminal case and that, despite having been duly notified of the hearing in said case, failed or refused to appear without any valid reason;</li> <li>• Testimony of the clerk of court of the court where the criminal case is pending who will testify that the accused was duly notified of the hearing of the case and yet s/he failed to appear without any valid reason.</li> </ul> | <p><b>Documentary and Object:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter;</li> <li>• Appointment or Certificate of Employment of the accused;</li> <li>• Pre-Trial Order where the accused is listed as a witness;</li> <li>• Subpoena addressed to the accused duly issued;</li> <li>• Return of the subpoena or any proof of receipt of subpoena by the accused;</li> <li>• Court Order declaring a waiver of the testimony due to the witness' repeated absence;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|--|---|
| of RA 9165.   |  | <ul style="list-style-type: none"> <li>• Minutes of the Court; and</li> <li>• Transcript of Stenographic Notes of the Court.</li> </ul>   |
| <p><b>Elements (Section 91, 3rd paragraph):</b></p> <ul style="list-style-type: none"> <li>• The accused is the immediate superior of a member of the law enforcement agency or any other government employee;</li> <li>• The accused fails to notify the court of the transfer or reassignment of the said member of the law enforcement agency or any other government employee who is a witness for the prosecution in any proceedings involving violations of RA 9165.</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Testimony of the clerk of court of the court where the criminal case is pending who will testify that the accused did not notify the court of the transfer or reassignment of his/her subordinate who is a witness for the prosecution in a criminal case for violation of RA 9165.</li> </ul> | <p><b>Documentary</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter;</li> <li>• Appointment or Certificate of Employment of the accused;</li> <li>• Proof that the accused is/was the immediate superior of the absent witness/es who was transferred or re-assigned;</li> <li>• Pre-Trial Order where one of the listed witnesses is under the direct and immediate supervision of the accused;</li> <li>• Subpoena addressed to the absent witness/es duly issued;</li> </ul> |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS  |
|---|--|---|
|   |  | <ul style="list-style-type: none"> <li>• Return of the subpoena;</li> <li>• Court Order declaring the waiver of the witness/es' testimony due to repeated absence;</li> <li>• Minutes of the Court;</li> <li>• Transcript of Stenographic Notes of the Court; and</li> <li>• Proof of transfer or reassignment of the absent witness/es pending trial of the case.</li> </ul> |
| <p><b>Elements</b></p> <ul style="list-style-type: none"> <li>• The accused is a government officer or employee tasked with the prosecution of drug-related cases under RA 9165 either as prosecutor, prosecution witness, or as law enforcement agent; and</li> <li>• The criminal case is unsuccessfully</li> </ul> | <p><b>Testimonial:</b></p> <ul style="list-style-type: none"> <li>• Witness/es who will testify that the criminal case for violation of RA 9165 is unsuccessfully prosecuted or is dismissed due to the patent laxity, inexcusable neglect, and/or unreasonable delay on the part of the accused prosecutor, prosecution witness,</li> </ul> | <p><b>Documentary:</b></p> <ul style="list-style-type: none"> <li>• Complaint or Referral letter;</li> <li>• Appointment or Certificate of Employment of the accused;</li> <li>• Affidavit of a witness/es;</li> <li>• Minutes of the Court proceedings;</li> </ul>   |

| TITLE AND ELEMENTS  | EVIDENCE TO PROVE THE ELEMENTS   | DOCUMENTARY/ OBJECT REQUIREMENTS   |
|---|--|--|
| <p>prosecuted or is dismissed due to the patent laxity, inexcusable neglect, and/or unreasonable delay on the part of the accused prosecutor, prosecution witness, or law enforcement agent; or that said accused prosecutor, prosecution witness, or law enforcement agent deliberately causes the unsuccessful prosecution and/or dismissal of said drug cases.</p> | <p>or law enforcement agent; or that said accused prosecutor, prosecution witness, or law enforcement agent deliberately causes the unsuccessful prosecution and/or dismissal of said drug case.</p> | <ul style="list-style-type: none"> <li>• Transcript of Stenographic Notes of the court proceedings; and</li> <li>• Order/Resolution/ Decision of the court in the criminal case where the accused acted either as prosecutor, prosecution witness/es, or as law enforcer.</li> </ul> |
| <p><b>Witnesses to the Destruction or Disposal or Burning of Dangerous Drugs or Plant Sources of Dangerous Drugs During Eradication Operations</b></p> <p>The destruction and disposal or burning of seized dangerous drugs or plant sources of dangerous drugs, controlled</p>   |  |  |

| TITLE AND ELEMENTS   | EVIDENCE TO PROVE THE ELEMENTS | DOCUMENTARY/ OBJECT REQUIREMENTS |
|--|--------------------------------|----------------------------------|
| <p>drugs, controlled precursors and essential chemicals, instruments/ paraphernalia, and/or laboratory equipment shall be done in public and witnesses by the following:</p> <ul style="list-style-type: none"> <li>• The respondent/ accused or his/her representative or counsel or a member of the Public Attorney's Office appointed by the Secretary of Justice;</li> <li>• A representative from the media;</li> <li>• A representative from the DOJ;</li> <li>• A representative from civil society groups; and</li> <li>• Any elected public official.<sup>38</sup></li> </ul> |                                |                                  |

<sup>38</sup> Section 3(k) of DDB Regulation No. 1, series of 2002.

# CHAPTER 5:

## SEARCHES AND SEIZURES

## CHAPTER V: Searches and Seizures

---

### Sec. 1. Warrants for Search and Seizure of Evidence

#### A. Purpose for Obtaining Search and Seizure Warrant

The purpose of the constitutional provision against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasion of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted.

“As a component of the right to privacy, the fundamental right against unlawful searches and seizures is guaranteed by the 1987 Constitution. Article III, Section 2 of the 1987 Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses s/he may produce, and particularly describing the place to be searched and the persons or things to be seized.”<sup>39</sup>

A search and seizure warrant is secured to allow law enforcement officers to enter the house, premises, or areas of a private person and search for evidence of a crime. The purpose of the warrant is to search for illegal drugs, firearms, or other evidence of a crime in a place that otherwise would be off limits to law enforcement officers due to privacy rights guaranteed by the constitution.

#### B. Search Warrant Application Requirements

No search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness/es s/he may

---

<sup>39</sup> See Mario Veridiano y Sapi v. People, G.R. No. 200370, June 7, 2017.

produce, and particularly describing the place to be searched and the persons or things to be seized.<sup>40</sup>

### C. Existence of Probable Cause

Probable cause for a valid search warrant is defined “as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched.”<sup>41</sup>

One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause, which, under the Rules of Court, must be in connection with one specific offense to prevent the issuance of a scatter-shot warrant.<sup>42</sup>

### D. Description of Place - Sufficiency

A description of a place to be searched is sufficient if the officer with the warrant can and identify with reasonable effort the place intended, and distinguish it from other places in the community. A designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.<sup>43</sup>

### E. Reasonable Particularity of Description of the Things

The purpose for this requirement is to limit the articles to be seized only to those particularly described in the search warrant in order to leave the officers of the law with no discretion regarding what items they shall seize, to the end that no unreasonable searches and seizures will be committed.<sup>44</sup>

The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to:

- Readily identify the properties to be seized and thus prevent them from seizing the wrong items; and
- Leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures.<sup>45</sup>

A search warrant may be said to particularly describe the things to be seized:

- When the description therein is as specific as the circumstances will ordinarily allow or when the description expresses a conclusion of fact—not of law by which the warrant officer may be guided in making the search and seizure; and
- When the things to be described are limited to those which bear direct relation to the offenses for which the warrant is being issued.<sup>46</sup>

Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission.<sup>47</sup>

### F. Personal Determination by the Judge – Intent

The purpose of requiring a personal determination by the judge is to ensure that a warrant is issued not merely on the basis of the affidavits of the complainant and his witness/es, but only after examination by the judge of the complainant and his witness/es.<sup>48</sup>

## Sec. 2. Exceptions to the Warrant Requirement in Searches and Seizures

The following are recognized instances of permissible warrantless searches:<sup>49</sup>

- Warrantless search incidental to a lawful arrest;
- Plain view;
- Search of a moving vehicle;
- Consented warrantless searches;
- Customs search;
- Stop and Frisk; and
- Exigent and emergency circumstances.

<sup>40</sup> 1987 Constitution, Article III, Section 2.

<sup>41</sup> See *People of the Philippines v. Myrna Gayoso y Arguelles*, G.R. No. 206590, March 27, 2017.

<sup>42</sup> See *People v. Pastrana*, G.R. No. 196045, February 21, 2018.

<sup>43</sup> See *Dimal v. People*, G.R. No. 216922, April 18, 2018.

<sup>44</sup> *Ibid.*

<sup>45</sup> See *People v. Pastrana*, G.R. No. 196045, February 21, 2018.

<sup>46</sup> See *Dimal and Castillo v. People*, G.R. No. 216922, April 18, 2018.

<sup>47</sup> See *Dimal and Castillo v. People*, G.R. No. 216922, April 18, 2018.

<sup>48</sup> See *Honesto Ogayon y Diaz v. People*, G.R. No. 188794, September 2, 2015.

<sup>49</sup> See *Mario Veridiano y Sapi v. People*, G.R. No. 200370, June 7, 2017.

## A. Warrantless search incidental to lawful arrest

A search incidental to a lawful arrest requires that there must first be a lawful arrest before a search is made. Otherwise stated, a lawful arrest must precede the search. The process cannot be reversed.<sup>50</sup>

## B. Plain view

Under the plain view doctrine, objects within the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence.<sup>51</sup>

The plain view doctrine applies when the following requisites concur:

- The law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which s/he can view a particular area;
- The discovery of the evidence in plain view is inadvertent; and
- It is immediately apparent to the officer that the item s/he observes may be evidence of a crime, contraband or otherwise subject to seizure.<sup>52</sup>

The doctrine serves to supplement the prior justification—whether it be a warrant for another object, hot pursuit, search incident to a lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused—and permits the warrantless seizure. The extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them. The ‘plain view’ doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.<sup>53</sup>

## C. Search of a moving vehicle

Routinary and indiscriminate searches of moving vehicles are allowed if they are limited to a visual search. On the other hand, extensive searches are permissible only when they are founded upon probable cause.<sup>54</sup>

An extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause to believe that the vehicle’s

passengers committed a crime, or a crime is actually being committed, or when the vehicle contains instruments of an offense.<sup>55</sup>

Law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.<sup>56</sup>

Examples of valid warrantless search based on tip coupled with other circumstances:

- The accused pushed the police out of the way and attempted to alight from the bus after the police introduced themselves and inquired about the ownership of a box which the accused had in his possession. In this case, apart from the tip, the police observed suspicious behavior on the part of the accused that gave them reasonable ground to believe that a crime was being committed.<sup>57</sup>
- A police officer received information that a bag marked with “O.K.” was about to be transported on a passenger jeepney. On the basis of the tip, said police officer conducted surveillance on board a jeepney. Upon seeing the bag described to him, the police officer peeked inside and smelled the distinct odor of marijuana. The tipped information and the police officer’s personal observations gave rise to probable cause that rendered the warrantless search valid.<sup>58</sup>
- Apart from the tip, the police officers noticed marijuana leaves protruding through a hole in one of the sacks carried by the accused.<sup>59</sup> This was enough probable cause to make the warrantless search valid.

Example of an invalid warrantless search of a moving vehicle:

- The vehicle was flagged down because the police officers who were on routine patrol became suspicious when they saw that the back of the vehicle was covered with kakawati leaves, which, according to them, was unusual and uncommon. It was ruled that the fact the vehicle looked suspicious simply because it is not common for such to be covered with kakawati leaves does not constitute probable cause as would justify the conduct of a warrantless search.<sup>60</sup>

<sup>50</sup> See *People v. Racho*, 640 Phil. 669, 676 (2010).

<sup>51</sup> See *People of the Philippines v. Go*, 457 Phil. 885, 928 (2003).

<sup>52</sup> See *Judge Abelita III vs. P/Supt. Doria*, 612 Phil. 1127, 1135-1136.

<sup>53</sup> See *Jaylord Dimal and Allan Castillo v. People*, G.R. No. 216922, April 18, 2018.

<sup>54</sup> See *Mario Veridiano y Sapi vs. People*, G.R. No. 200370, June 7, 2017.

<sup>55</sup> *Ibid.*, citing *Valmonte v. De Villa*, 264 Phil. 265, 271 (1990).

<sup>56</sup> *Ibid.*

<sup>57</sup> See *Mario Veridiano y Sapi vs. People*, G.R. No. 200370, June 7, 2017, citing *People v. Breis*, 767 Phil 40 (2015).

<sup>58</sup> *Ibid.*, citing *People v. Mariacos*, 635 Phil 315 (2010).

<sup>59</sup> *Ibid.*, citing *People v. Ayangao*, 471 Phil 379 (2004).

<sup>60</sup> See *Caballes v. CA and People*, G.R. No. 136292, January 15, 2002.

#### D. Consented warrantless searches

Although the right against unreasonable searches and seizures may be surrendered through a valid waiver, the prosecution must prove that the waiver was executed with clear and convincing evidence. Consent to a warrantless search and seizure must be unequivocal, specific, intelligently given, and unattended by duress or coercion. The validity of a consented warrantless search is determined by the totality of the circumstances. This may involve an inquiry into the environment in which the consent was given such as “the presence of coercive police procedures.” Mere passive conformity or silence to the warrantless search is only an implied acquiescence, which amounts to no consent at all.<sup>61</sup>

To constitute a valid waiver, it must first appear that:

- The right exists;
- The person involved had knowledge, either actual or constructive, of the existence of such right; and
- The said person had an intention to relinquish the right.<sup>62</sup>

The circumstances relevant to the determination of the person giving consent and the environment in which said consent is given are:

- The age of the defendant;
- Whether the defendant was in a public or a secluded location;
- Whether the defendant objected to the search or passively looked on;
- The education and intelligence of the defendant;
- The presence of coercive police procedures;
- The defendant’s belief that no incriminating evidence would be found;
- The nature of the police questioning;
- The environment in which the questioning took place; and

<sup>61</sup> Ibid.

<sup>62</sup> See *People v. Figueroa and Valerio*, G.R. No. 134056, July 6, 2000.

- The possible vulnerable subjective state of the person giving consent.

In one particular case, police officers were manning a checkpoint. They flagged down a motorcycle that had no plate number driven by the accused. They asked the accused to present his driver’s license and the motorcycle’s registration paper, which s/he failed to produce. Consequently, the police officers searched the motorcycle. During the search, the police asked the accused to open the U-box of the motorcycle, which s/he did. The police found gambling paraphernalia. Thus, they arrested the accused. The SC said that considering that the accused willingly opened the U-box upon the police request fell within the purview of a consented search.<sup>63</sup>

It has also been held that passive submission to a search cannot be construed as an implied acquiescence to the warrantless search.<sup>64</sup>

In one particular case, the owner of the house subject of the search asked for the search warrant from the law enforcers. The law enforcers, who apparently were not armed with a search warrant, proceeded to search the house without objection from the owner. It was ruled that the search conducted was illegal since the owner of the house did not have any intention to relinquish the right against warrantless search.<sup>65</sup>

In another case, the accused, who was carrying a carton, boarded a bus where two policemen were riding. The policemen inspected the carton and found marijuana inside. When asked who owned the box, the accused denied ownership and failed to object to the search. It was ruled the warrantless search was illegal and held that the accused is not to be presumed to have waived the unlawful search simply because s/he failed to object.<sup>66</sup>

#### E. Customs Search

Customs searches, as exception to the requirement of a valid search warrant, are allowed when persons exercising police authority effect search and seizure in the enforcement of customs laws.

To be a valid customs search, the requirements are:

- The person/s conducting the search was/were exercising police authority under customs law;

<sup>63</sup> See *Mallari v. People*, G.R. No. 228170, December 4, 2017.

<sup>64</sup> See *Caballes v. CA and People*, G.R. No. 136292, January 15, 2002.

<sup>65</sup> See *Mallari v. People*, G.R. No. 228170, December 4, 2017.

<sup>66</sup> See *People v. Barros*, 231 SCRA 557 (1994), citing *People v. Burgos*, 144 SCRA 1 (1986).



- The search was for the enforcement of customs law; and
- The place searched is not a dwelling place or house.<sup>67</sup>

## F. Stop and Frisk

A stop and frisk is defined as the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. For a valid stop and frisk search, the arresting officer must have had personal knowledge of facts which would engender a reasonable degree of suspicion of an illicit act.<sup>68</sup> Law enforcers must have a genuine reason to believe, based on their experience and the particular circumstances of each case, that criminal activity may be afoot.<sup>69</sup> Mere suspicion is not enough.<sup>70</sup>

To sustain the validity of a stop and frisk search, the arresting officer should have personally observed two (2) or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.<sup>71</sup>

Stop and frisk serves a two-fold interest:

- The general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and
- The more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom s/he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.<sup>72</sup>

Law enforcers do not have unbridled discretion in conducting stop and frisk searches. While probable cause is not required, a stop and frisk search cannot be valid on the basis of a suspicion or hunch.<sup>73</sup> The allowable scope of a stop and frisk search is limited to a protective search of outer clothing.

## G. Exigent and Emergency Circumstances

Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern, based on facts that they themselves observe, whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.<sup>74</sup>

In one case, a search warrant was dispensed with as the courts were closed and there was general chaos and disorder happening during a coup d'état.<sup>75</sup>

<sup>67</sup> See Erwin Libo-on Dela Cruz v. People, G.R. No. 209387, January 11, 2016.  
<sup>68</sup> See Larry Manibog v. People of the Philippines, G.R. No. 211214, March 20, 2019.  
<sup>69</sup> See Mario Veridiano y Sapi v. People, G.R. No. 200370, June 7, 2017.  
<sup>70</sup> See Malacat v. Court of Appeals, 347 Phil 462 (1997).  
<sup>71</sup> See Larry Manibog v. People of the Philippines, G.R. No. 211214, March 20, 2019.  
<sup>72</sup> See Malacat v. Court of Appeals, 347 Phil. 462, 481-482 (1997).  
<sup>73</sup> Ibid.

<sup>74</sup> See People vs. Victor Cogaed y Romana, G.R. No. 200334, July 30, 2014.  
<sup>75</sup> See People v. Rolando De Garcia, G.R. Nos. 102009-10, July 6, 1994.

# CHAPTER 6:

DETENTION, ARREST, AND  
CONFESSION

## CHAPTER VI: Detention, Arrest, and Confession

---

### Sec. 1. General Provisions

The conduct of law enforcement agencies' operations is governed by rules of procedures that are anchored on the Bill of Rights as contained in Article III of the 1987 Constitution which identifies and defines the fundamental rights of citizens, to wit:

- No person shall be deprived of life, liberty, or property without due process of law. All persons shall enjoy equal protection of the law;<sup>76</sup>
- All persons have the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. No search warrant or warrant of arrest shall be issued except upon probable cause;<sup>77</sup>
- Any person under investigation shall have the right to be informed of his rights to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, s/he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel;<sup>78</sup>
- There should be no torture, force, violence, threat, intimidation, or any other means which vitiate the free will. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited and any confession or admission obtained through these shall be an admission in evidence against him;<sup>79</sup> and
- The accused shall be presumed innocent until proven guilty.<sup>80</sup>

Should an arrest be made not in accordance with the above rules, or otherwise put, if the arrest is not lawfully warranted, such apprehension will be declared illegal, and the arresting officers may be prosecuted for the crime of Arbitrary Detention under Article 124 of the Revised Penal Code which penalizes any public officer or employee who, without legal grounds, detains a person. This is in addition to such other crimes or offenses that may be committed in the course of the illegal apprehension and detention.

---

<sup>76</sup> Section 1, Article III of the 1987 Constitution.

<sup>77</sup> Section 2, Article III of the 1987 Constitution.

<sup>78</sup> Section 12.1, Article III of the 1987 Constitution.

<sup>79</sup> Sections 12.2 and 12.3, Article III of the 1987 Constitution.

<sup>80</sup> Section 14.2, Article III of the 1987 Constitution.

### A. Rights of Persons Arrested, Detained, or Under Custodial Investigation

Any person arrested, detained, or under custodial investigation shall at all times be assisted by counsel. It is required that:

- Any person under custodial investigation has the right to remain silent;
- Anything s/he says can and will be used against him in a court of law;
- S/he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and
- If s/he cannot afford an attorney, one will be provided before any questioning if s/he so desires.

The said rights are guaranteed to preclude the slightest use of coercion by the State as would lead the accused to admit something false, not to prevent him from freely and voluntarily telling the truth.<sup>81</sup>

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, the waiver shall be null and void and of no effect. Furthermore, any waiver provided by a person in custody shall be freely, voluntarily, and knowingly made.

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, or
- priest or religious minister chosen by him or by any member of his immediate family, or
- by his counsel, or
- by any national non-governmental 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, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.<sup>82</sup>

### B. Custodial Investigation

This involves any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, who is taken into custody and the police carries out a process of interrogations that lend itself to eliciting incriminating statements that the rules laid down in Section 12 (1), Article III of the Constitution and Section 2 of R.A. No. 7438 begin to operate<sup>83</sup>

Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission.<sup>84</sup>

Custodial investigation, under R.A. No. 7438, shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense s/he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.<sup>85</sup>

A "request for appearance" issued by law enforcers to a person identified as a suspect is akin to an "invitation". Thus, the suspect is covered by the rights of an accused while under custodial investigation. Any admission obtained from the "request for appearance" without the assistance of counsel is inadmissible in evidence.<sup>86</sup>

## Sec. 2. Detention

A person subject of a warrantless arrest must be delivered to the proper judicial authorities within the periods provided in Article 125 of the Revised Penal Code, otherwise, the public official or employee could be held liable for the failure to deliver except if grounded on reasonable and allowable delays.

<sup>81</sup> See *People of the Philippines v. Robelyn Cabanada y Rosaura*, G.R. No. 221424, July 19, 2017.

<sup>82</sup> Section 2. R.A. No. 7438.

<sup>83</sup> See *People v. Omilig*, G.R. No. 206296, August 12, 2015.

<sup>84</sup> See *Lopez v. People*, G.R. No. 212186, June 29, 2016.

<sup>85</sup> See *People v. Omilig*, G.R. No. 206296, August 12, 2015.

<sup>86</sup> See *Lopez v. People*, G.R. No. 212186, June 29, 2016.

Article 125 of the Revised Penal Code is intended to prevent any abuse resulting from confining a person without informing him of his offense and without allowing him to post bail. It punishes public officials or employees who shall detain any person for some legal ground but fail to deliver such person to the proper judicial authorities within the periods prescribed by law. In case the detention is without legal ground, the person arrested can charge the arresting officer with arbitrary detention under Article 124 of the Revised Penal Code. This is without prejudice to the possible filing of an action for damages under Article 32 of the New Civil Code of the Philippines.<sup>87</sup>

The waiver of Article 125 of the Revised Penal Code must coincide with the prescribed period for preliminary investigation as mandated by Section 7, Rule 112 of the Rules of Court. Detention beyond this period violates the accused's constitutional right to liberty.<sup>88</sup>

A detainee under such circumstances must be promptly released to avoid violation of the constitutional right to liberty, despite a waiver of Article 125 of the Revised Penal Code, if the 15-day period (or the thirty 30- day period in cases of violation of RA 9165) for the conduct of the preliminary investigation lapses. This rule also applies in cases where the investigating prosecutor resolves to dismiss the case, even if such dismissal was appealed to the DOJ or made the subject of a motion for reconsideration, reinvestigation, or automatic review. The reason is that such dismissal automatically results in a prima facie finding of lack of probable cause to file an information in court and to detain a person.<sup>89</sup>

### Sec. 3. Arrest

It is the taking of a person into custody in order that s/he or she may be bound to answer for the commission of an offense. It occurs when there is actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.<sup>90</sup>

As a general rule, an arrest is considered legitimate if effected with a valid warrant of arrest. The Rules of Court, however, recognizes permissible warrantless arrests.<sup>91</sup>

<sup>87</sup> In the matter of the Petition for Issuance of Writ of Habeas *Corpus* with Petition for Relief, Integrated Bar of the Philippines, Pangasinan Legal Aid and Jay-Ar. R. Senin v. Department of Justice, Provincial Prosecutor's Office, Bureau of Jail Management and Penology, and Philippine National Police, G.R. No. 232413, July 25, 2017.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> See *Luz y Ong v. People*, G.R. No. 197788, February 29, 2012.

<sup>91</sup> See *People v. Delos Reyes*, G.R. No. 174774, August 31, 2011.

### A. Permissible Warrantless Arrests

A peace officer or a private person may, without a warrant, arrest a person:

- When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- When an offense has just been committed and s/he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- When the person to be arrested is a prisoner who has escaped from a penal establishment or place where s/he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.<sup>92</sup>

In cases falling under paragraphs (a) and (b) of Section 5, Rule 113 of the Rules of Court, the person arrested without a warrant shall be delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112 of the Rules of Court.<sup>93</sup>

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 provisions of Article 125 of the Revised Penal Code.<sup>94</sup>

### Sec. 4. *In flagrante delicto* arrests

In arrest *in flagrante delicto*, the accused is apprehended at the very moment s/he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer.<sup>95</sup>

#### A. Requisites

An *in flagrante delicto* arrest requires the concurrence of two (2) elements:

- the person arrested must execute an overt act indicating that s/he has just committed, is actually committing, or is attempting to commit a crime; and
- the overt act was done in the presence or within the view of the arresting officer.<sup>96</sup>

<sup>92</sup> Section 5, Rule 113, Rules of Court.

<sup>93</sup> *Ibid.*

<sup>94</sup> Section 3, Republic Act No. 7438.

<sup>95</sup> See *Saraum v. People*, G.R. No. 205472, January 25, 2016.

<sup>96</sup> See *Porteria y Manebali v. People*, G.R. No. 233777, March 20, 2019.

## B. Overt Act Test

Overt or external act has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.<sup>97</sup>

The validity of a warrantless arrest requires compliance with the overt act test. Failure to comply with the overt act test renders an *in flagrante delicto* arrest invalid. In one case, a supposed *in flagrante delicto* arrest was invalidated when the accused did not exhibit an overt act suggesting that s/he was in possession of illegal drugs at the time that s/he was apprehended.<sup>98</sup>

Examples of overt acts:

- A man with “reddish eyes and who was walking in a swaying manner” at a place frequented by people using drugs, and who tried to avoid the police officers were sufficient facts observed by the police officers that led them to believe that the man was high on drugs and compelled them to investigate and search him.<sup>99</sup>
- A man holding transparent sachets containing white crystalline substance was walking on a street rampant for drug trafficking. Police officers on patrol saw the man and the transparent sachets and their contents.<sup>100</sup>

Instances Not Considered Overt Acts:

- When the police officer was at a considerable distance away from the alleged criminal transaction (5 to 10 meters), and considering the atomity of the object thereof (0.04 gram of white crystalline substance contained in a plastic sachet), such is highly doubtful that the arresting officer was able to reasonably ascertain that any criminal activity was afoot so as to prompt a lawful *in flagrante* arrest and a warrantless search.<sup>101</sup>
- A mere passenger carrying a blue bag and a sack and travelling aboard a jeepney, especially when s/he is not exhibiting any unusual

or suspicious behavior, is insufficient to justify the law enforcer in believing that s/he was engaged in a criminal activity.<sup>102</sup>

- Acting on an information received about a man in possession of illegal drugs on board a bus, police officers waited for the bus along the highway and when the man disembarked, invited him to the police station. As the man pulled out his hand from his pocket, a white envelope fell yielding a sachet of shabu. In holding that the warrantless search was invalid, the Supreme Court observed that suspect was not “committing a crime in the presence of the police officers” at the time s/he was apprehended. Moreover, the man was arrested solely on the basis of a tip.<sup>103</sup>
- A conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. Mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.<sup>104</sup>

## C. Personal knowledge of arresting officer is required

In effecting an *in flagrante delicto* arrest under Section 5 (a) and (b) of Rule 113 of the Revised Rules of Criminal Procedure,<sup>105</sup> the officer’s personal knowledge of the fact of the commission of an offense is essential. Under Section 5(a), the officer himself witness/es the crime, while in Section 5(b), the officer must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it.<sup>106</sup>

## D. Example of *In Flagrante Delicto* Arrest

Two policemen, resting in front of a store after patrolling the street, saw the accused standing at a street corner 5 meters away from them and pulling a plastic sachet from his pocket. The accused was examining the sachet but due to the distance, the policemen could not see the contents. They discreetly approached the accused to scrutinize what the accused was holding. Within an arm’s length distance, they saw that the sachet contained marijuana. The policemen introduced themselves and the accused tried to flee but one of the policemen was able to grab his

<sup>102</sup> See *People v. Cogaed*, G.R. No. 200334, July 30, 2014.

<sup>103</sup> See *Veridiano v. People*, G.R. No. 200370, June 7, 2017.

<sup>104</sup> See *Rimando v. People*, G.R. No. 229701, November 29, 2017.

<sup>105</sup> Section 5. Arrest without warrant, when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

- a. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- b. When, an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- c. When, the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

<sup>106</sup> See *Mario Veridiano y Sapi v. People*, G.R. No. 200370, June 7, 2017.

<sup>97</sup> See *Rait v. People*, G.R. NO. 180425, July 31, 2008.

<sup>98</sup> See *Mario Veridiano y Sapi v. People*, G.R. No. 200370, June 7, 2017, citing *People v. Cogaed*, 740 Phil. 212 (2014).

<sup>99</sup> See *Manalili v. Court of Appeals*, 345 Phil. 632.

<sup>100</sup> See *People v. Marcial M. Pardillo*, G.R. No. 219590, June 7, 2017.

<sup>101</sup> See *Sindac v. People*, G.R. No. 220732, September 06, 2016.

hands to recover the plastic sachet. The Supreme Court said that, when the policemen approached the accused, they were not as yet effecting a warrantless arrest. Their purpose was merely to inquire into what appeared to be suspicious actuations of the accused. It was only upon close scrutiny that they were able to see what was inside the plastic sachet; hence the warrantless arrest they effected was justified since the accused was actually committing a crime in their presence.<sup>107</sup>

#### E. *Not In Flagrante Delicto* Arrest

- When the police officer was at a considerable distance away from the alleged criminal transaction (5 to 10 meters), and considering the atomity of the object thereof (0.04 gram of white crystalline substance contained in a plastic sachet), such is highly doubtful that the arresting officer was able to reasonably ascertain that any criminal activity was afoot so as to prompt a lawful *in flagrante* arrest and a warrantless search.
- A policeman and a civilian asset were riding a motorcycle cruising at 30 kph when they saw the accused, 10 meters away, showing “improper and unpleasant movements” with one of them handing a sachet to the other person. The policeman arrested them and confiscated 2 plastic sachets containing white crystalline substance. The Supreme Court ruled that the warrantless arrest was unlawful and found it highly implausible for the policeman to identify with reasonable accuracy, especially from a distance of around 30 meters and while on board a motorcycle cruising at a speed of 30 kph, miniscule amounts of white crystalline substance inside 2 very small plastic sachets held by the accused. The acts of standing around with a companion and handing over something to another person cannot in any way be considered criminal acts. Even if the accused and his companion were showing “improper and unpleasant movements”, the same would not have been sufficient to effect a lawful warrantless arrest.<sup>108</sup>
- A mere passenger carrying a blue bag and a sack and travelling aboard a jeepney, especially when s/he is not exhibiting any unusual or suspicious behavior, is insufficient to justify the law enforcer in believing that s/he was engaged in a criminal activity.<sup>109</sup>

<sup>107</sup> See *Kenneth Santos v. People*, G.R. No. 232950, August 13, 2018.  
<sup>108</sup> See *Alvin Comerciante v. People*, G.R. No. 205926, July 22, 2015.  
<sup>109</sup> See *People v. Cogaed*, G.R. No. 200334, July 30, 2014.

#### F. Other Relevant Jurisprudence

- An arrest made after an entrapment does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court.<sup>110</sup>
- Coordination with the Philippine Drug Enforcement Agency (PDEA) is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of RA 9165 requires the National Bureau of Investigation, Philippine National Police, and the Bureau of Customs to maintain “close coordination with the PDEA on all drug related matters,” the provision does not, by so saying, make PDEA’s participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of RA 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.<sup>111</sup>
- The choice of whether to apply for a search warrant or to conduct a buy-bust operation is within the exclusive discretion of the police and is irrelevant to the issue of whether a legitimate buy-bust operation was undertaken. Certainly, police officers have the right to choose which legal means or processes are best suited, given the circumstances, in accomplishing the task they are called upon to perform.<sup>112</sup>

### Sec. 5. Extra-Judicial Confessions

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.<sup>113</sup>

#### A. Admissibility: Constitutional limitation

A confession is admissible in evidence if it is satisfactorily shown to have been obtained within the limits imposed by the 1987 Constitution. Section 12, Article III provides:

<sup>110</sup> See *Teodosio y Blancaflor v. Court of Appeals*, G.R. No. 124346, June 8, 2004.  
<sup>111</sup> See *People v. Roa y Villaluz*, G.R. No. 186134, May 6, 2010.  
<sup>112</sup> See *People v. Balaquit*, G.R. No. 206366, August 13, 2014.  
<sup>113</sup> Section 2(d), RA 7438.

- Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, s/he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
- No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
- Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.<sup>114</sup>

### B. Requisites

An extrajudicial confession to be admissible, must conform to the following requisites:

- The confession must be voluntary;
- The confession must be made with the assistance of a competent and independent counsel, preferably of the confessant's choice;
- The confession must be express; and
- The confession must be in writing.<sup>115</sup>

### C. Extrajudicial Confession is not a Sufficient Ground for Conviction

An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*.<sup>116</sup> Said evidence may be either direct or circumstantial evidence. If it is circumstantial evidence, the accused may be convicted when:

- There is more than one circumstance;
- The facts from which the inferences are derived are proven; and
- The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.<sup>117</sup>

There must be such corroboration that, when considered in connection with a confession, will show the guilt of the accused beyond reasonable doubt. Circumstantial evidence may be sufficient corroboration of a confession.<sup>118</sup>

### D. Confession is Presumed Voluntary

A confession is presumed to be voluntary until the contrary is proved and the declarant bears the burden of proving that his confession is involuntary and untrue.<sup>119</sup> The term "voluntary" means that the accused speaks of his free will and accord, without inducement of any kind, and with a full and complete knowledge of the nature and consequences of the confession.<sup>120</sup>

### E. Voluntariness May Be Inferred from the Language

The voluntariness of a confession may be inferred from its language such that if, upon its face, the confession exhibits no suspicious circumstances tending to cast doubt upon its integrity, it being replete with details which could only be supplied by the accused, it may be considered voluntary.<sup>121</sup>

### F. Personal Circumstances of Accused Must Be Considered

In determining voluntariness, the following should be considered:

- Age, character, and circumstances prevailing at the time it was made;
- Situation and surroundings of the accused;
- Intelligence of the accused; and
- The accused realized the import of his act.<sup>122</sup>

<sup>114</sup> See *People v. Rapeza y Francisco*, G.R. No. 169431, April 4, 2007.

<sup>115</sup> *Ibid.*

<sup>116</sup> Rule 133, Section 3, Revised Rules of Court.

<sup>117</sup> See *Porteria y Manebali v. People*, G.R. No. 233777, March 20, 2019.

<sup>118</sup> See *People v. Satorre*, G.R. No. 133858, August 12, 2003.

<sup>119</sup> See *People v. Porio y Rapsing*, G.R. No. 117202, February 13, 2002.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*



### **G. Extrajudicial Confession Made Before Media**

Statements spontaneously made by a suspect to news reports during a televised interview are deemed voluntary and admissible in evidence.<sup>123</sup>

Admissions made by a suspect during the press conference called by the Mayor is competent evidence to support his conviction even if made without the assistance of counsel. The Constitutional procedures on custodial investigation do not apply to spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby the suspect orally admitted having committed the crime.<sup>124</sup>

---

<sup>123</sup> See *People v. Guillermo*, GR No. 147786, 20 January, 2004, citing *People v. Andan*, (336 Phil 91, 106, [1997]) and *People v. Vizcarra*, (115 SCRA 743, 752, [1982]) where the accused, under custody, gave spontaneous answers to a televised interview by several press reporters in the office of the CIS. In these cases, the court ruled that confessions were made in response to questions by news reporters, not by the police or any other investigating officer. These extrajudicial confessions were deemed admissible as evidence.

<sup>124</sup> See *People v. Mantung*, G.R. No. 130372, July 20, 1999.

# CHAPTER 7:

## OPERATION

## CHAPTER VII: Operation

---

### Sec. 1. Initiatory Acts

All law enforcement agencies may initiate investigations for violations of RA 9165 pursuant to their mandate, laws and jurisprudence, and lawful orders from their superiors.

The law enforcers are mandated or authorized to initiate investigations based on any of the following sources:

- Intelligence Report - means any information, which can be extracted from the blotter, information reports, and/or summary of information, for the purpose of validation, verification, and counter-action;
- Letter from other government agencies - whether foreign or local counterparts, that either requests for assistance in apprehending drug suspects, seizure of dangerous drugs, providing any information or leads as to the identity of personalities involved in illegal drugs;
- Directives from superiors - investigations are initiated based on the orders of the Director General of PDEA or his deputies. For members of the PNP, orders are derived either from the Chief PNP or the Secretary of the DILG. For their part, the agents and investigators of the NBI can be properly directed by the Secretary of Justice or the Director of the NBI. All of these law enforcers are likewise bound to follow the orders from the Office of President to investigate crimes involving illegal drugs or initiate investigations on personalities involved in illegal drugs;
- Agency initiative - law enforcers, at their own initiative and with the approval of their superiors, can also initiate investigation based on information provided by a concerned citizen, or their assets and confidential informants;
- Complaint or letter-request from any person to look into the possible drug activity of certain personalities or neighborhood; and
- Other sources such as but not limited to social media platforms.

Based on these sources, the law enforcement agencies (LEAs) shall secure authority to verify the information to validate it for counter-action.

## Sec. 2. Planning/Preparation

As a general rule, all operations must be preceded by adequate planning and preparation to ensure the successful prosecution of cases, observance of human rights of suspects, safety of operating elements, and the security and integrity of seized items/evidence.

Good intelligence is indispensable in the planning and preparation for an operation. It must be a product of careful analysis of all relevant information such as maps, physical description of target premises, sketches, personality profiles of suspects, terrain, and population analyses of the area(s) and other information that can contribute to establishing the modus operandi and apprehension of suspects and/or seizure of prohibited items and evidence with the least danger posed to operating elements.

All planned anti-illegal drug operations must be covered by an Authority to Operate, a Coordination Form, and/or Pre-Operation Reports, and subsequently documented by relevant reports such as intelligence reports, after surveillance reports, after casing reports, spot reports, progress reports, and/or after operation reports.

While the authority to conduct investigation might not be required during the inquest or preliminary investigation, the authority may be necessary to give credibility to the investigation or when asked by the court during the trial.

Coordination with the local police in the area of operation is essential to prevent any possible misencounter provided that the security and confidentiality of the operation will not be compromised.

Only PDEA agents and members of any Drugs Enforcement Unit of the PNP, the NBI, and the Bureau of Customs shall be allowed to conduct planned anti-illegal drug operations.

## Sec. 3. Coordination Requirements

Prior to any planned anti-illegal drug operation, the PNP, NBI, and other law enforcement agencies shall, as far as practicable, coordinate with the PDEA.

The word “as far as practicable” as stated in Section 86, IRR of RA 9165 means that prior coordination with the PDEA may be done, practiced, or accomplished when feasible and possible. Nonetheless, it admits of exceptions, such as but not limited to:

- In remote places where coordination is not possible;
- When coordination will compromise the lives of police operatives, informants, and witnesses involved in anti-illegal drug operations;
- When coordination will hinder the apprehension of drug suspects and confiscation of dangerous drugs and Controlled Precursors and Essential Chemicals (CPECs); and
- When prior coordination will compromise the entire police operation.

In the above instances, post coordination shall still be made in lieu of prior coordination.

## Sec. 4. Conduct of Operations

This Section covers the specific rules and procedures in the following drug operations:

- Plain *In Flagrante* Arrest
- Buy-Bust Operation
- Implementation of Search Warrants
- Eradication of Marijuana
- Interdiction
  - ◇ Airport
  - ◇ Seaport
  - ◇ Maritime Interdiction
  - ◇ Land

### A. Plain *In Flagrante* Arrest

Any law enforcement officer can effect an arrest for violation of RA 9165 when, in his presence, the person arrested has committed, is actually committing, or is attempting to commit a violation of RA 9165, or when a violation of RA 9165 has just been committed, and the arresting officer

has probable cause to believe based on personal knowledge of facts or circumstances that the person arrested has committed it.<sup>125</sup> A private person can also effect *in flagrante* arrest pursuant to Section 5, Rule 113 of the Revised Rules on Criminal Procedure.

Personal knowledge, for purposes of determining probable cause, means actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be coupled with good faith on the part of the peace officers making the arrest.<sup>126</sup>

These are the steps to be taken when making *in flagrante* arrest (to include checkpoint operation and other warrantless anti-illegal drug operations):

1. The arrested person must be restrained with handcuffs or other restraining materials but no violence or unnecessary force shall be used or greater restraint shall be made than is necessary for the person's detention.<sup>127</sup> The arrested person must be apprised of his Constitutional rights which may be expressed as follows:<sup>128</sup>

"I/We am/are arresting you for violation of RA 9165. You are hereby informed of your right to remain silent and to have competent and independent counsel preferably of your own choice. And if you cannot afford the services of counsel, you will be provided one."; or

*"Ako/Kami ay inaaresto kita/ka namin sa paglabag sa RA 9165. Pinapaalalahan kita/ka namin na ikaw ay may karapatang magsawalang kibo at magkaroon ng isang manananggol na iyong sariling pili, at kung hindi mo kayang umupa ng isang manananggol, bibigyan ka naming ng isa."*

2. When a person is arrested or caught *in flagrante delicto*, a search on his person, his belongings, and immediate premises must be made. A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.<sup>129</sup>

<sup>125</sup> Rules of Court, Rule 113, Section 5 (a) & (b).

<sup>126</sup> See *Pestilos v. Generoso*, G.R. No. 182601, November 10, 2014.

<sup>127</sup> Rules of Court, Rule 113, Section 2, paragraph 2.

<sup>128</sup> The 1987 Philippine Constitution, Article III, Section 12, paragraph 1.

<sup>129</sup> Rules of Court, Rule 126, Section 13.

3. The taking of photographs, and physical inventory of the drug or non-drug evidence seized or confiscated must immediately be conducted on site and in the presence of the required witness/es. If not practicable, the taking of photograph and physical inventory must be conducted at the nearest police station or office of the apprehending team/officer<sup>130</sup> and ensure that the integrity and evidentiary value of the evidence seized are preserved and processed according to the following:

a. Drug evidence:

- Take photographs;
- Place markings;
- Conduct separate inventory;
- Accomplish all the above in the presence of witness/es, and the accused or his representative or counsel. In the absence of these witness/es, the same must be explained in the affidavit;
- Have the inventory signed by witness/es;
- Give the witness/es and the accused, or his counsel or his representative a copy of the inventory;
- Place drug evidence in evidence bag, if necessary; and
- Accomplish the Chain of Custody Form. (See Annex 2)

b. Non-drug evidence:

- Take photographs;
- Place markings if not readily identifiable or if necessary;
- Conduct inventory;
- Accomplish all the above in the presence of witness/es, and the accused or his representative or counsel. In the absence of these witness/es, the same must be explained in the affidavit;
- Have the inventory signed by witness/es;

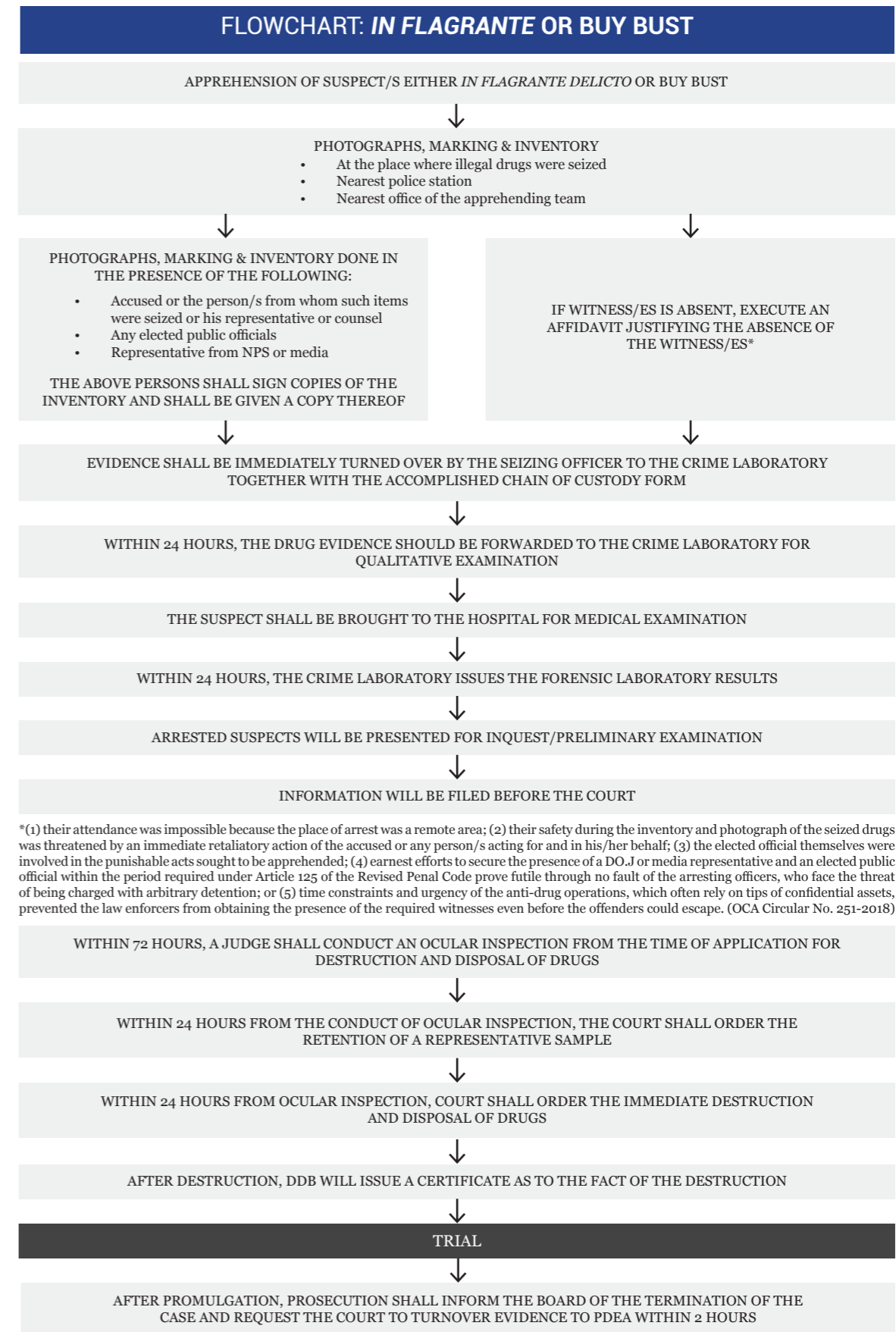
<sup>130</sup> See Sec 21 of RA 9165 as amended.

- Give the witness/es, and the accused or his representative or counsel with a copy of the inventory;
  - Secure drug evidence in evidence bag, if necessary; and
  - Accomplish a separate Chain of Custody Form. (See Annex 3)
4. Submit the drug evidence for laboratory examination and secure results.
    - a. Prepare request for laboratory examination.
    - b. Document the submission or turnover in the chain of custody.
    - c. Accomplish the Acknowledgment Receipt.
  5. Submit the non-drug evidence to the concerned evidence custodian for safekeeping.
    - a. Document the submission or turnover in the separate chain of custody.
    - b. Accomplish Acknowledgment Receipt.
  6. Process the person arrested.
    - a. Subject the person to medical examination.
    - b. Subject the person to booking procedures.
      - Accomplish the booking sheet.
      - Take and encode the personal information.
      - Fingerprint and photograph the person, preferably in mug shot background.
      - Check criminal records.
      - Subject the person to drug test and secure results.
  7. Prepare case folder for the inquest of the person. The responsible agent/Investigator-On-Case shall prepare the Case Referral to the Prosecutor's Office for inquest proceedings for violation of RA 9165 and should attach the following:

- a. Essential Documentary Evidence:
  - Case Referral to the Prosecutor's Office (See Annex 5);
  - Affidavit of Arrest (See Annex 5);
  - Affidavit of Seizing Officer (See Annex 9);
  - Inventory of Property Seized (See Annex 7);
  - Accomplished Chain of Custody Form;
  - Request for and Result of Laboratory Examination/Chemical Analysis of Seized Items; and
  - Photographs of evidence.
- b. Other Documentary Evidence, that may be presented upon being required by the Inquest/Investigating Prosecutor:
  - Affidavit of the Investigator-On-Case;
  - Affidavits of witness/es under Section 21 or Letters of Invitations to the witness/es and, in the absence of one of the witness/es, provide a justification under oath for such absence;
  - Affidavits of other witness/es;
  - Investigation report;
  - Spot report;
  - Request for and Result of Physical/Medical Examination and Laboratory Screening Test of the suspects;
  - Receipt of Inventory of Property Seized;
  - Receipt of Turn-Over of Evidence;
  - Receipt of Turn-Over of Arrested Suspects;

- Acknowledgment Receipt of Drug Evidence from the Chemist;
- Photographs of the Suspects; and
- Booking Sheet and Arrest Report.

## FLOWCHART NO.1



## B. Entrapment/Buy-Bust Operations

All buy-bust operations shall be in accordance with the provisions of Article III of the 1987 Constitution, Section 5, Paragraph (a), Rule 113 of the Rules of Court, and prevailing jurisprudence.

These procedures may vary depending on the prevailing situation during operation. Flexibility is provided as there is no hard-and-fast rule in buy-bust operations. For the conduct of entrapment/buy-bust operations, the law enforcement unit/s must take into consideration the following:

1. Plan the buy-bust operation by considering all available intelligence information and report about the suspect/target individual that could aid the operatives in the conduct of a successful buy-bust operation;
2. Conduct surveillance, validate information, and, if necessary and practicable, a test buy may first be conducted. The dangerous drugs purchased shall be photographed, marked, sealed, and submitted to the PDEA Laboratory Service, the PNP Crime Laboratory, or NBI Forensic Laboratory, as the case may be, for analysis and custody;
3. Secure Authority to Operate;
4. Coordinate the operation with PDEA, as far as practicable. The lack of required coordination with PDEA under RA 9165, Section 86 will not, however, invalidate the buy-bust operation which is just a form of *in flagrante* arrest sanctioned by the Rules of Court, Rule 113, Section 5;<sup>131</sup>
5. Conduct a briefing preparatory to the buy-bust to discuss the designation of personnel and their respective duties, safety and security aspect of the operation, and possible coordination with the other law enforcement units. The logistical and documentary requirements for the operation shall also be discussed and prepared;
6. Secure or record genuine and earnest efforts to secure the witness/es from the National Prosecution Service or media and an elected public official;
7. During the actual buy-bust, the poseur-buyer must ensure that the suspect delivers the illegal drugs and accepts the buy-bust money

before giving the pre-arranged signal to the other members of the team for the arrest of the suspect;

8. When the suspect is arrested, the Arresting Officers shall immediately introduce themselves, then inform the suspect/s of the nature of their arrest and of their constitutional rights unless the same would endanger the lives of the arresting team, in which case the process may be done after the suspect is secured. After the arrest, the Arresting Officers shall search the body of the suspect for any deadly weapon and illegal items and recover the buy-bust money;
9. The Seizing Officer shall immediately confiscate and take custody of the illegal drugs and buy-bust money, if available. During the physical inventory, the Seizing Officer must mark and take photographs of the seized/recovered evidence, affix accordingly his/her signature/initials, indicate the corresponding date, and chronologically label the same in accordance with Section 21 of RA 9165, as amended by RA 10640, in the presence of witnesses required by law<sup>132</sup> by affixing her or his initials, the date and her or his signature and labeling the same chronologically in sequence, as the case may be;
10. The taking of photographs, marking, and inventory shall be made at the place where the dangerous drugs and/or illegal items were seized, but for justifiable reasons, the same can be done at the nearest police station or office of the apprehending officer or team, whichever is practicable. However, in cases when inventory is not done on site, the inventory officer must be able to justify and explain the reason for his/her failure to do so to ensure the preservation of the integrity and evidentiary value of the seized item/s;
11. Thereafter, the Arresting/Seizing Officer shall turn-over the arrested suspects to the custodial facility for booking and processing. The arrested suspects shall undergo physical/medical examination and drug test within twenty-four (24) hours from the time of arrest;
12. The Seizing Officer shall submit the seized dangerous drugs to the PDEA Laboratory Service, PNP Crime Laboratory, or the NBI Forensic Laboratory, as the case may be, for examination and analysis;
13. The responsible agent/Investigator-On-Case shall prepare all documentary/evidentiary requirements for purposes of inquest proceedings before the appropriate Prosecutor's Office for violation

<sup>131</sup> See *People v. Balaquit*, G.R. No. 206366, August 13, 2014.

<sup>132</sup> (a) The suspect or person/s from whom such items were confiscated and/or seized or his/ her representative or counsel; (b) an elected Public Official; and (c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory. (Note: The presence of the above-mentioned witnesses shall only be required during the physical inventory of the confiscated items. If in case said witnesses are absent, their absence should be recorded in the report, explaining the reason why they are absent. It must be shown that earnest efforts were exerted to contact and sure the presence of these witnesses.



of pertinent provisions of RA 9165. These requirements shall include the following:

a. Essential Documents:

- Case Referral to the Prosecutor's Office;
- Affidavit of Arrest;
- Affidavit of Seizing Officer;
- Affidavit of Poseur Buyer;
- Inventory of Property Seized;
- Accomplished Chain of Custody Form;
- Request for and Result of Laboratory Examination/Chemical Analysis of Seized Items; and
- Photographs of evidence;

b. Supporting Documents, if applicable:

- Affidavit of the Investigator-On-Case;
- Affidavits of witness/es under Section 21 of RA 9165 or any other formal request and, in the absence of one of the witness/es, a statement under oath setting forth the justification for the absence of one of the witness/es;
- Affidavits of other witness/es;
- Spot Report;
- Request for and Result of Physical/Medical Examination and Laboratory Screening Test of the suspects;
- Receipt of Inventory of Property Seized;
- Receipt of Turn-Over of Evidence;
- Receipt of Turn-Over of Arrested Suspects;

- Acknowledgment Receipt of Drug Evidence from the Chemist;
- Photographs of the Suspects; and
- Booking Sheet and Arrest Report.

14. The responsible agents/Investigator-On-Case shall bring the person subject of the arrest, together with the relevant evidence, the arresting officers, seizing officers, and/or other witness/es to the Prosecutor's Office for inquest proceedings.<sup>133</sup>

### C. Implementation of Search Warrants

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness/es s/he may produce, and particularly describing the place to be searched and the persons or things to be seized.<sup>134</sup>

As a general rule, the application for search warrant shall be filed with the executive judge of any court within whose territorial jurisdiction a violation of RA 9165 has been committed or is being committed. For compelling reasons, as stated in the application, the same can be filed with the executive judge of any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

Per the authority delegated by the Chief of the PNP, all applications for search warrant for violations of RA 9165 which shall be enforceable within the territorial jurisdiction of the issuing court, must be endorsed or authorized by the following key officials in their respective territorial jurisdictions: Deputy Chief for Operations, Directorate for Investigation and Detective Management, Directorate for Integrated Police Operations, Regional Directors, Directors, National Support Units, Regional Chiefs, National Support Units, Provincial Directors, Provincial Offices, National Support Unit, and Chief of Police.

<sup>133</sup> The case must be filed within the reglementary period prescribed under Article 125 of the Revised Penal Code, which is 12 hours for Light Offenses, 18 hours for Less Grave, and 36 hours for Grave Offense.

<sup>134</sup> Section 2, Article III, 1987 Constitution.

Per the authority delegated by the PDEA Director General, all applications for search warrant for violations of RA 9165 which shall be enforceable within the territorial jurisdiction of the issuing court, must be endorsed or authorized by the following key officials of the PDEA in their respective territorial jurisdictions: Deputy Director General for Operations, Regional Directors, Director, Special Enforcement Service, Director, Intelligence and Investigation Service, and Deputy Regional Directors.

Per the authority delegated by the NBI Director, all applications for search warrant for violations of RA 9165 which shall be enforceable within the territorial jurisdiction of the issuing court, must be endorsed or authorized by the following key officials in their respective territorial jurisdictions: the Regional Directors or Acting Regional Directors, Deputy Director for Regional Operations Services, Deputy Director for Intelligence Services, and Deputy Director for Investigative Services.

However, the Executive Judge and Vice Executive Judges of the Regional Trial Courts of Manila and Quezon City are authorized to act on all applications for search warrants involving dangerous drugs and to issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of said courts.<sup>135</sup>

The applicant shall report to the court administrator the action taken on the application if not acted upon by the judge within the day. Otherwise, the applicant shall furnish the court administrator a copy of the return of the warrant for its information. The DOJ shall coordinate with the court administrator to come up with a mechanism that will institutionalize a reasonable process for a speedy and systematic issuance of a warrant.

For purposes of an application for a search warrant, the following documents shall be necessary:

- Affidavit of Deponent;

- Affidavit of Applicant, who has personal knowledge of the relevant facts and circumstances, which shall contain the name of the applicant, his rank/position and office where s/he belongs, authority to apply for search warrant, name of the person/occupant of the premises to be searched, address of the premises to be searched, and proof of illegal activity;
- Photographs;
- Statement of witness/es under oath;
- Sketch of the premises;
- Surveillance Reports, as far as practicable;
- Description of place; and
- Certification from Crime Laboratory or NBI/PDEA Forensic Laboratory.

It should be noted that there should be a reasonable particularity in the description of the place and/or things subject of the search.

A description of the place to be searched is sufficient if the officer with warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community. A designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it satisfies the constitutional requirement of definiteness.<sup>136</sup>

A search warrant may be said to particularly describe the things to be seized (1) when the description therein is as specific as the circumstances will ordinarily allow, (2) when the description expresses a conclusion of fact—not of law by which the warrant officer may be guided in making the search and seizure, and/or (3) when the things to be described are limited to those which bear direct relation to the offenses for which the warrant is being issued. The purpose for this requirement is to limit the articles to be seized only to those particularly described in the search warrant in order to leave the officers of the law with no discretion regarding what items they shall seize, to the end that no unreasonable searches and seizures will be committed.<sup>137</sup>

<sup>135</sup> A.M. No. 99-10-09-SC (Re: Resolution Clarifying the Guidelines on the Application for and Enforceability of Search Warrants.) The Court Resolved to APPROVE the Draft Resolution Clarifying the Guidelines on the Application for and Enforceability of Search Warrants.

In the interest of an effective administration of Justice and pursuant to the powers vested in the Supreme Court by the Constitution, the following are authorized to act on all applications for search warrants involving heinous crimes, illegal gambling, dangerous drugs, and illegal possession of firearms: The Executive Judge and Vice Executive Judges of the Regional Trial Courts, Manila and Quezon City, filed by the Philippine National Police (PNP), the National Bureau of Investigation (NBI), The Presidential Anti-Organized Crime Task Force (PAOC-TF) and the Reaction Against Crime Task Force (REACT-TF) with the Regional Trial Courts of Manila and Quezon City.

The applications shall be personally endorsed by the heads of the said agencies, for the search of places to be particularly described therein, and the seizure of property of things as prescribed in the Rules of Court, and to issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of said courts. The authorized judges shall keep a special docket book listing the details of the applications and the result of the searches and seizures made pursuant to the warrants issued.

This Resolution is effective immediately and shall continue until further orders from this Court and shall be an exception to the provisions of Circular No. 13 dated 1 October 1985 and Circular No. 19 dated 4 August 1987. This Resolution supersedes Administrative Order No. 20-97, issued on 12 February 1997, and Administrative Order No. 46-97, issued on 19 March 1997.

The Court Administrator shall implement this Resolution.

<sup>136</sup> *Dimal v. People*, G.R. No. 216922, April 18, 2018.

<sup>137</sup> *Ibid.*

Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission.<sup>138</sup>

The search warrant shall be implemented within ten (10) days from its issuance. Thereafter, it shall be void. The warrant must direct that it be served in the daytime, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a directive may be included that it be served at any time of the day or night. It may be served during daytime or nighttime as provided for in the search warrant.<sup>139</sup>

The place to be searched must be the place described and indicated in the search warrant.

Prior to the conduct of the search, coordination with the PDEA must be made, as far as practicable. The searching team must secure the presence of the required witness/es under Section 21 of RA 9165.

The evidence seized must be properly photographed, marked, and inventoried in accordance with RA 9165. The officer seizing the property under the warrant must give a copy of the inventory for the same to the lawful occupant of the premises, or his lawyer, or his authorized representative, or in their absence the witness/es, in whose presence the search and seizure were made.

The real property subject of the search warrant must be properly secured and endorsed to the occupants' relative, neighbor, or lawyer or to the concerned barangay officials in case all occupants are arrested or are brought to the office of the raiding team. Where the real property subject of the search warrant is being leased, the same shall be properly endorsed to the lessor/owner.

The search warrant must be returned to the issuing court within ten (10) days from its execution, informing the court of what transpired during its implementation, including any seizures and/or arrests made.

The agent/Investigator-On-Case shall transmit the necessary complaint for violation of pertinent provisions of RA 9165 to the Prosecutor's Office for inquest proceedings. The complaint must be accompanied/supported by:

- Case Referral to the Prosecutor's Office;

- Copy of the Search Warrant;
- Affidavit of Arrest;
- Affidavit of Seizing Officer;
- Inventory of Property Seized;
- Accomplished Chain of Custody Form;
- Request for Laboratory Examination/ Chemical Analysis of Seized Items;
- Chemistry Report; and
- Photographs of the evidence.

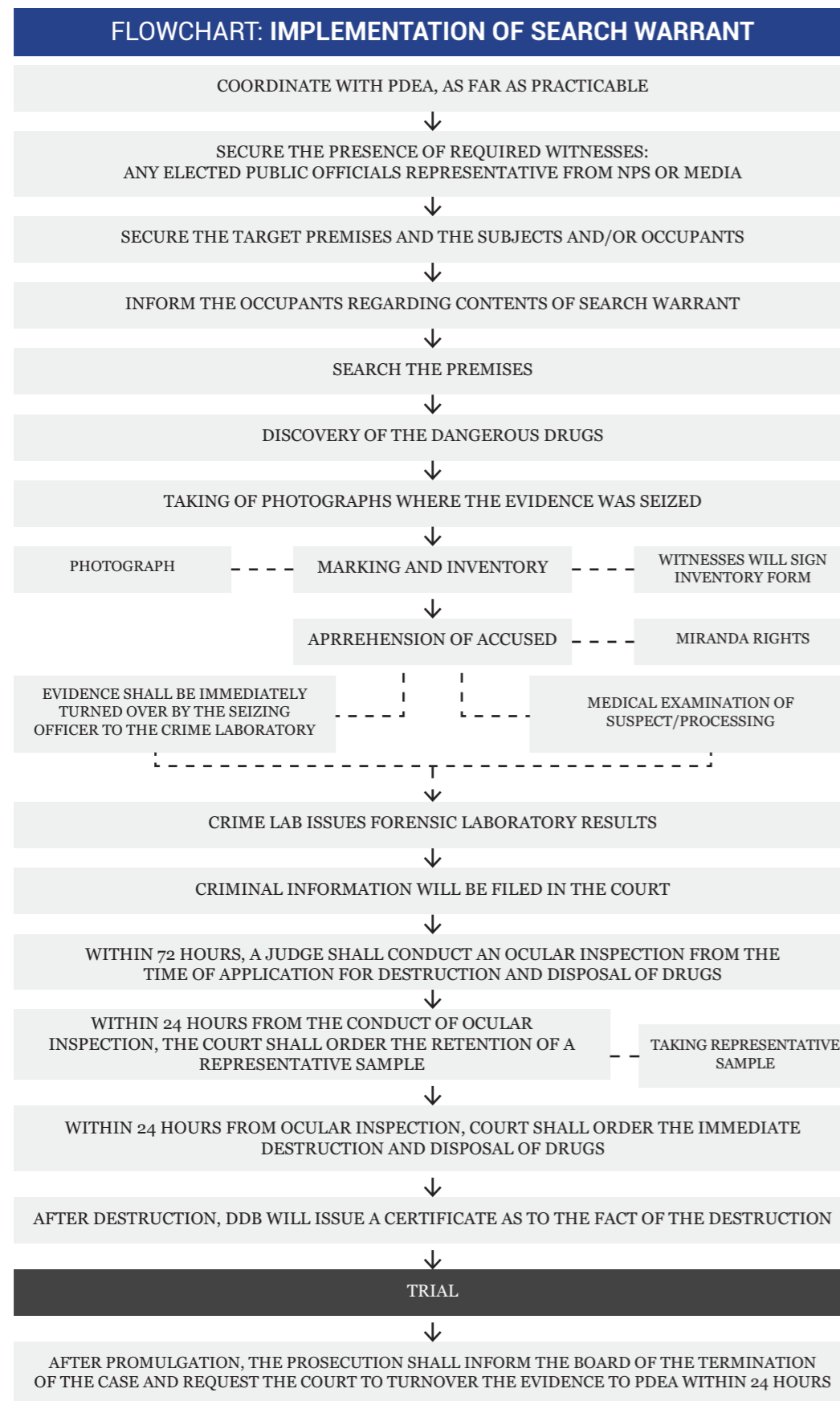
The complaint may also be accompanied/supported by the following documents:

- Affidavit of the investigator-on-case;
- Affidavits of witness/es under Section 21 of RA 9165 or any other formal request and, in the absence of one of the witness/es, a statement under oath setting forth the justification for the absence of one of the witness/es;
- Affidavits of Other Witness/es;
- Request for and Result of Physical/Medical Examination and Laboratory; Screening Test of the suspects
- Receipt of Inventory of Property Seized;
- Receipt of Turn-Over of Evidence;
- Receipt of Turn-Over of Arrested Suspects;
- Acknowledgment Receipt of Drug Evidence from the Chemist;
- Photographs of the Suspects;
- Booking Sheet and Arrest Report; and
- Application for Search Warrant.

<sup>138</sup> Dimal v. People, G.R. No. 216922, April 18, 2018.

<sup>139</sup> Sections 9 and 10, Rule 126, Revised Rules of Criminal Procedure.

## FLOWCHART NO.2



### D. Eradication of Marijuana, Opium Poppy, and Other Plant Sources of Dangerous Drugs<sup>140</sup>

As part of their mandate to conduct anti-illegal drug operations, law enforcers conduct eradication of marijuana, opium poppy, and other plant sources of dangerous drugs which generally refers to the seizure and destruction including uprooting of plant sources of cannabis or marijuana and other plants which are the sources of dangerous drugs. It will include the identification, arrest, and prosecution of the planter, owner, and cultivator, as well as escheating of the land where the plantations are located.

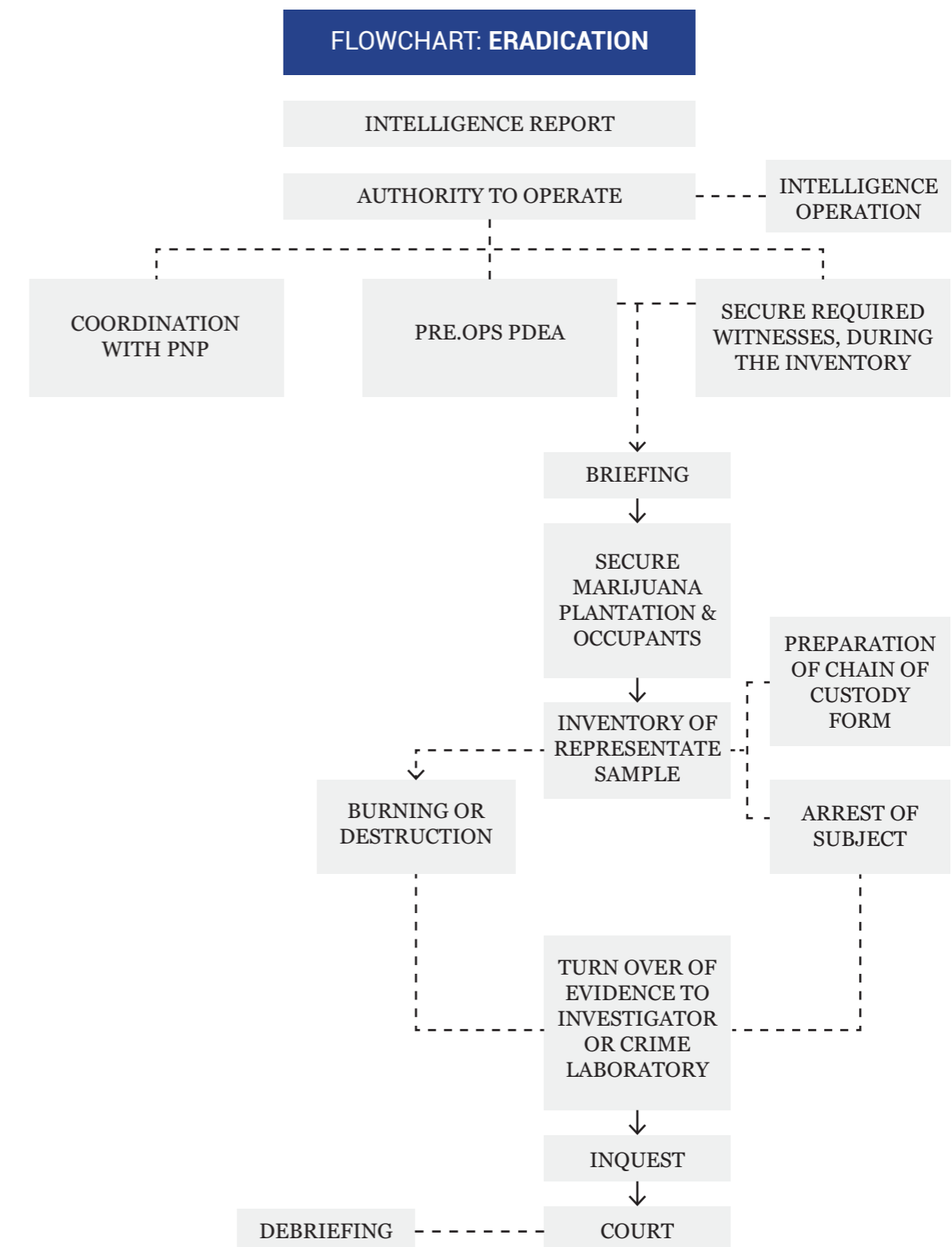
#### Steps to be Taken:

- The eradication operations shall be preceded by an intelligence data gathering to verify the existence of the plantation of marijuana, opium poppy, coca bush, and other plants which are sources of illegal drugs. The eradication operations shall be supported by documentary evidence such as the summary of information, maps, sketches, and photographs.
- After identifying the exact location of the target plantation and consequently establishing the identity of the cultivator or owner of the land and after making the corresponding threat assessment, the operating team shall make an operational plan, as far as practicable, and coordinate with PDEA, the local PNP and AFP units in the area for air and ground support/assistance, if necessary, in the eradication operation. The required witness/es under Sec. 21 of RA 9165 consisting of an elected official and a representative of the National Prosecution Service or media should be secured during the inventory.
- In cases where armed suspects are sighted at the plantation site, assault teams composed of either PNP, PDEA, NBI, and AFP shall be deployed to neutralize the threat before Anti-Illegal Drug Operations Teams are deployed.
- Assault teams shall immediately effect the arrest of any person found therein.

<sup>140</sup> PNP Manual on Anti -Illegal Drug Operations, pp. 57-58.

- Thereafter, eradication teams shall proceed with the uprooting of illegal plants. Uprooted and/or cut plants shall be brought to a designated area for destruction in the presence of the required witness/es under RA 9165.
- All uprooted plants, seedlings, and leaves must be destroyed and burned on site in accordance with provisions of Section 21 of RA 9165, its IRR, and DDB Regulations. Only substantial representative samples shall be taken for evidentiary purposes, which will be inventoried and marked in accordance with the prescribed procedure.
- The eradication team shall take photographs of the evidence from different angles before, during, and after the process of uprooting, destroying, and burning of the plants/seedlings.
- A case shall immediately be filed against the owner/cultivator of the plantation. Inquest proceedings shall proceed if the owner/cultivator is arrested. If the owner /cultivator is at large, the case shall be directly filed.

### FLOWCHART NO.3



## E. Interdiction

Interdiction involves operations conducted by different law enforcement units to intercept dangerous drugs being transported by air, water, and land.

### Steps to be taken in Interdiction in general:

- Ensure that the information or report is received and processed by PDEA/NBI/PNP;
- Secure Authority to Operate from respective head of agency or authorized representative of the operating unit;
- Conduct planning/briefing before proceeding with the operation, taking into consideration all operational requirements and securing the required witness/es;
- Coordinate the operation with PDEA and other concerned maritime or port authority and/or law enforcement agencies;
- Effect the seizure of dangerous drugs and/or controlled precursor and essential chemicals, equipment, or paraphernalia, as well as the arrest of the violator;
- Process the seized items by undertaking the taking of photographs, marking, and inventory of the seized items in the presence of the required witness/es and the suspect;
- Proceed with the chemistry analysis of the drug items through the concerned crime laboratory service. An investigator may also be designated to collate and work on all the necessary documents or pieces of evidence prior to the filing of the complaint;
- Submit the violator for booking, medical examination, and drug test; and
- Proceed with the inquest and prosecution of the violator.

Airports and Seaports Interdiction are conducted by the PNP, PDEA, and NBI through their respective agencies' interdiction units or in coordination with the airport, seaport, and maritime authorities and other concerned government agencies.

1. Airport Interdiction – Operational procedures provided by the Inter-Agency Drug Interdiction Task Group (IADITG) shall govern any drug interdiction operation conducted at airports. In other domestic or international airports that have existing procedures for drug interdiction, such procedures shall be observed. For airports where there is no established IADITG, the following procedures shall be followed:
  - a. In Airport Interdiction operations, the law enforcement agencies (LEAs) shall coordinate with the BOC, BI, Airport Authorities, and PDEA regarding planned operations;
  - b. In domestic airports where there are no BOC personnel available, the LEAs shall coordinate with the PNP AVSEGROUP in addition to the above-mentioned government agencies;
  - c. Whenever available, drug detection devices or aids such as K-9 units are to be used on luggage, freight, containers, etc;
  - d. Routine inspections and arrests of persons should be left to the BOC and concerned port authorities, unless a joint or coordinated operation was agreed upon;
  - e. Arrange the proper processing and turn-over of the persons arrested and the evidence seized;
  - f. Obtain the sworn statement of the personnel of the BOC or the concerned port authority who discovered and seized the evidence and of all possible witness/es, as well as secure all other relevant and material documents, records, or evidence;
  - g. Ensure that the taking of photographs, marking, and physical inventory is done on site and in the presence of the required witness/es and the accused or his counsel/representative in strict compliance of Section 21 of RA 9165;
  - h. Proceed with the laboratory examination of the drug evidence and secure the results;
  - i. Submit the violator for booking, medical examination, and drug test; and
  - j. Proceed with the inquest and prosecution of the violator.

2. Seaports Interdiction. – Operational procedures provided by the Inter-Agency Drug Interdiction Task Group (IADITG) shall govern any drug interdiction operation conducted at the seaports. In other domestic or international seaports that have existing procedures for drug interdiction, such procedures shall be observed. For seaports where there is no established IADITG, the rules on Airport Interdiction shall also apply.
3. Maritime Interdiction – Maritime interdiction operations involving anti-illegal drugs must be coordinated with PDEA. Such operations must be undertaken in coordination with the Philippine Coast Guard, Philippine Navy, and/or Philippine National Police Maritime Group. Maritime Interdiction operations shall be conducted by the law enforcement agency concerned in the following manner:
  - a. Prepare the intelligence report;
  - b. Secure an Authority to Operate from the head, or his authorized representative of the operating agency; and
  - c. Undertake the boarding and inspection of the vessel and seizure of the following:
    - Contraband brought aboard the vessel travelling in Philippine waters towards off-loading or landing area;
    - Contraband being transferred to and from vessels at sea (mother-ship operation);
    - Contraband brought by vessels close to shore preceded by signaling between vessels and the coast;
    - Contraband brought aboard inflatable boats and small-crafts moving offshore at high speed, especially at night; and
    - Contraband off-loaded by a vessel/craft anchored in remote areas off the coastline.

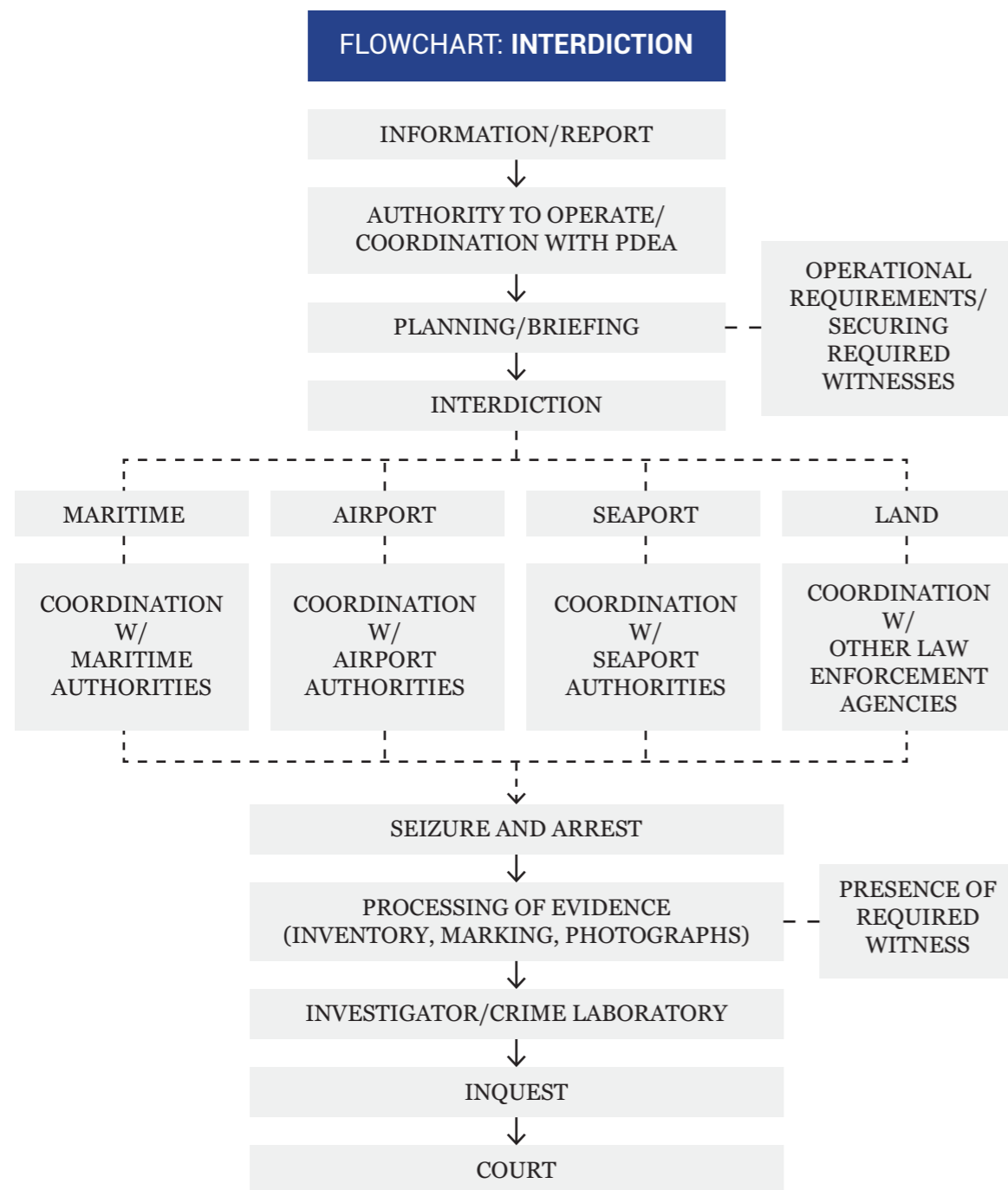
The following are actions to be taken in instances when boarding on foreign or local ships:

- Members of the boarding team shall initially board and secure the ship and the suspects;

- The Evidence Collection Team shall gather all relevant evidence in accordance with applicable rules;
- The proper port authority and/or maritime agency shall ensure that the ship is moored and anchored at the nearest seaport;
- In the absence of the required witness/es during the inventory, the law enforcement agency concerned shall ensure that at least two (2) residents of the locality of suitable age and discretion shall witness/es the inventory of the seized items; and
- The law enforcement agency concerned shall conduct follow-up operations, if necessary, and shall at all times observe all applicable rules relative to the filing of cases/complaints before the proper prosecution office.

When the target vessel has not been located, coastal search patrols shall be conducted at probable landing points and mobile checkpoints shall be established at probable escape routes of drug traffickers.

## FLOWCHART NO.4



## F. Controlled Delivery<sup>141</sup>

Controlled Delivery is the investigative technique of allowing an unlawful or suspected consignment of any dangerous drug and/or controlled precursor and essential chemical, equipment or paraphernalia, or property believed to be derived directly or indirectly from any offense, to pass into, through, or out of the country under supervision of an authorized officer, with a view to gathering evidence to identify and arrest any person involved in a dangerous drug-related offense or to facilitate prosecution of that offense.

### Steps to be taken in Controlled Delivery in General:

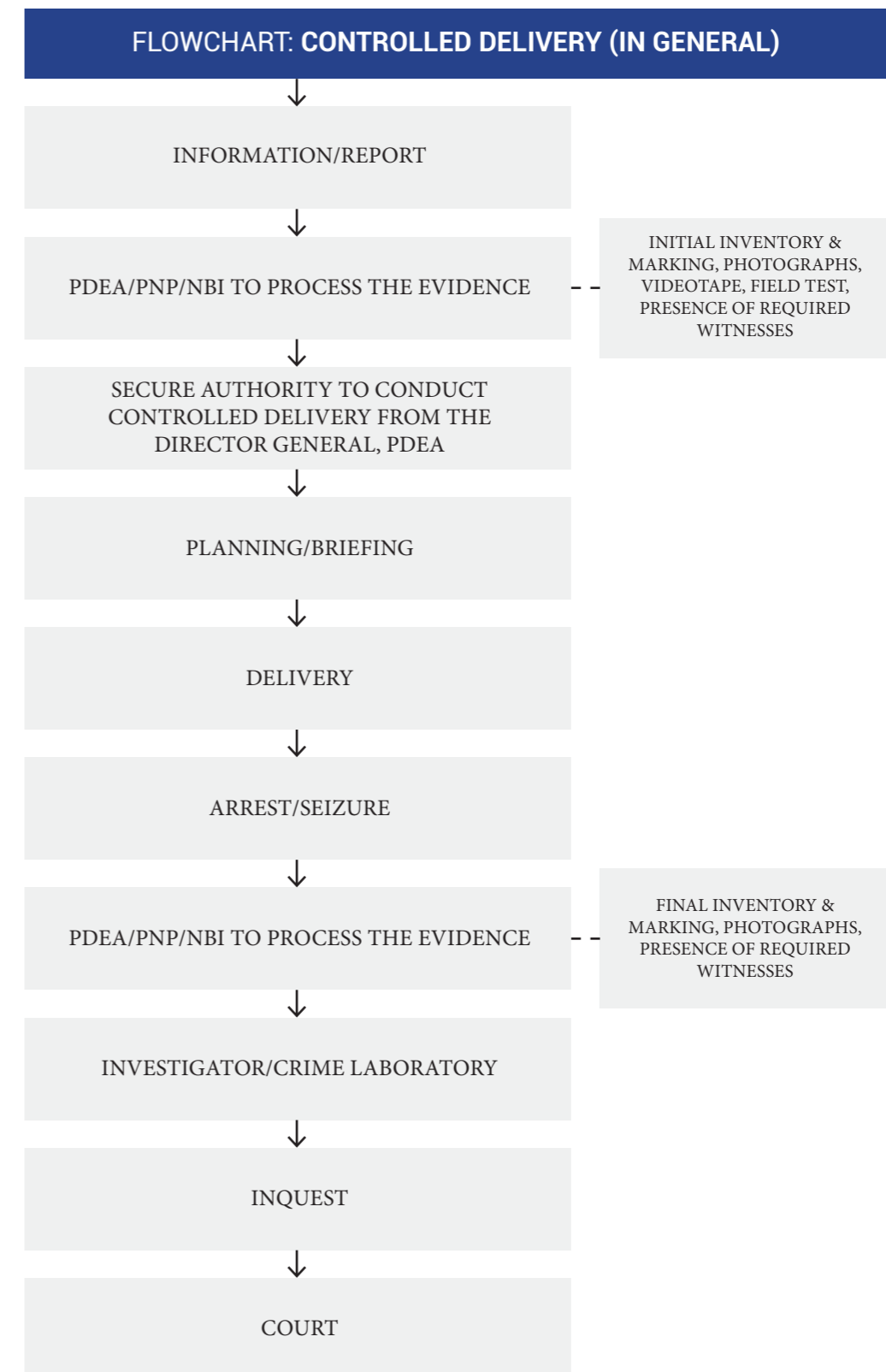
- Dangerous drug and/or controlled precursor and essential chemical, equipment or paraphernalia discovered and seized or came into the custody or control of the LEAs;
- Concerned PDEA, NBI, or PNP unit to process the items seized by conducting an initial photographing/videotaping, marking, inventory, and field testing in the presence of the required witness/es, if practicable pursuant to Article III of the DDB Regulation No. 2 Series of 2002;
- Authority to conduct controlled delivery to be secured from the Director General of PDEA;
- Conduct planning/briefing prior to the delivery of the seized items to their intended recipients or consignee. Consider the logistical requirements, team composition and roles, documentary requirements, witness/es to be secured, effective delivery, among others;
- Proceed with the controlled delivery;
- Effect the arrest of the intended recipient or consignee immediately after receipt of the items or implementation of search warrant as well as the seizure of the items;
- Concerned PDEA, NBI, or PNP unit to process the items seized by conducting a final photographing, marking, and inventory in the presence of the required witness/es and the suspect;

<sup>141</sup> DDB Regulation No. 2 Series of 2002 provides for the policies and guidelines in the conduct of controlled delivery operations.



- Proceed with the chemistry analysis of the drug items through the concerned PDEA, NBI, or PNP Crime Laboratory Service. An investigator may be designated to collate and work on all the necessary documents or pieces of evidence prior to the filing of the complaint; and
- Proceed with the inquest and prosecution of the arrested recipient or consignee.

## FLOWCHART NO.5



## Sec. 5. Reporting Requirements

In every anti-illegal drug operation the following reports will be prepared for documentation and as maybe required by the prosecution:

### A. For successful operations, including in *flagrante delicto* cases:

1. Spot Report which must include the following initial information:
  - a. Names of suspects arrested;
  - b. List of drugs and non-drug evidence seized;
  - c. Possible provision of law violated; and
  - d. Other information, if readily available, such as but not limited to:
    - Number and/or amount of drug and non-drug seized;
    - Nationality of the suspect/s; and
    - Other information of significance/importance to the investigation.
2. Progress Report shall be submitted as soon as more detailed information of the incidents and operations are gathered and confirmed. It may include:
  - a. Specific case or violation to be filed against the suspect/s;
  - b. Confirmed identity and exact amount/volume of the seized drug evidence (with attached certified Chemistry Report);
  - c. List of inventory of non-drug items seized or taken into custody; and
  - d. Other follow-up operations and activities in relation to the specific operations reported.
3. Final or After Operation Report; once the operation is concluded and the cases are filed in court, the Team Leader shall ensure the submission of an After Operation Report.

## Sec. 6. Handling, Custody, and Disposition of Drug and Non-Drug Evidence

During the handling, custody, and disposition of evidence, the provisions of Section 2 of RA 9165 and its IRR shall be strictly observed. Noncompliance under justifiable grounds with the requirements of Section 21 of RA 9165 shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. Any justification or explanation in cases of noncompliance with the said requirements, shall be clearly stated in the sworn statements/affidavits of the apprehending arresting/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items.

Photographs of the evidence must be taken immediately upon discovery of such, including the process of recording the inventory in the presence of required witness/es.

The Seizing Officer must mark all the evidence seized with his/her initials and signature, indicate the date when the evidence was found/recovered or seized, and number the same consecutively.

### A. Drug Evidence

1. Upon seizure or confiscation of dangerous drugs or CPECs, laboratory equipment, apparatus, and paraphernalia, the operating unit's Seizing Officer/Inventory Officer must conduct the photographing, marking, and physical inventory in the place of operation in the presence of (a) the suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel, (b) an elected public official, and (c) a representative from the National Prosecution Service or media, who shall affix their signatures and who shall be given copies of the inventory. The Chain of Custody Form shall also be accomplished together with the Inventory Sheet.
2. For seized or recovered drugs covered by search warrants, the photographing, marking, and inventory must be done in the place where the search warrant was served.
3. (3) For warrantless seizures like buy-bust operations, the photographing, marking, and physical inventory must be done at the place of apprehension, unless for justifiable reasons, the

photographing, marking, and physical inventory may be made at the nearest police station or office of the apprehending officer or team, ensuring that the integrity and evidentiary value of the seized items remain intact and preserved. Such justification or explanation as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items shall be clearly stated in a Sworn Affidavit of Justification/ Explanation of the apprehending/seizing officers.

4. In cases when the execution of search warrant is preceded by warrantless seizures, the photographing, marking, and inventory of the items recovered from the search warrant shall be performed distinctly and separately from the photographing, marking, and inventory of the items seized from warrantless seizures.
5. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh as a complete entity, the Seizing Officer shall estimate their count or gross weight, as the case may be. If it is safe and practicable, the photographing, marking, and inventory of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to DDB Board Regulation No.1, Series of 2002 and/or DDB Board Regulation No. 1, Series of 2007 shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the *corpus delicti* of the seized/confiscated plant sources following the Chain of Custody of evidence rule.
6. Whenever necessary, the dangerous drugs and/or CPECs seized shall be properly packed, sealed, and marked with the seizing officer's initials and signature, indicate the date when the evidence was found/recovered or seized, and number the same consecutively.
7. Within the same period, the Seizing or Inventory Officer shall prepare an Inventory Sheet which shall include:
  - a. Time, date, and place of occurrence/seizure;
  - b. Identity of person/s arrested;
  - c. Identity of the seizing officer and all persons who witnessed the marking and inventory;
  - d. Type of operation (e.g. warrantless seizure, buy-bust);

- e. Description of the vehicle, vessel, place, or person searched from where/whom the substance was found;
- f. Description of packaging, seals, and other identifying marks;
- g. Quantity of the seized items; and
- h. Description of the substance found.

8. As far as practicable, all seized dangerous drugs and/or CPECs shall be immediately submitted to the crime laboratory for examination and proper disposition.
9. Upon submission of the drug evidence to the crime laboratory for examination, all phases of the turnover of evidence must be supported by corresponding receipts showing compliance with the Chain of Custody rule.

#### **B. Non-Drug Evidence**

(To Be Covered in A Separate Inventory Sheet and Chain of Custody Form)

1. The following pieces of non-drug evidence shall be photographed, marked, and inventoried:
  - a. Buy-bust/marked money, if applicable;
  - b. For motor vehicles and other forms of transportation (e.g. banca, bicycle, airplane), plate number/conduction sticker number, color, model, make and type, and description;
  - c. For firearms: serial number, model, make and caliber, kind and type;
  - d. For explosives (after observing safety protocol from Explosive Ordnance Disposal Unit), description and type;
  - e. For other deadly weapons (e.g. knives), description, measurement, and quantity; and
  - f. For smaller pieces of evidence (e.g. ammunition), pertinent information such as quality, quantity, and place where these were seized/recovered.

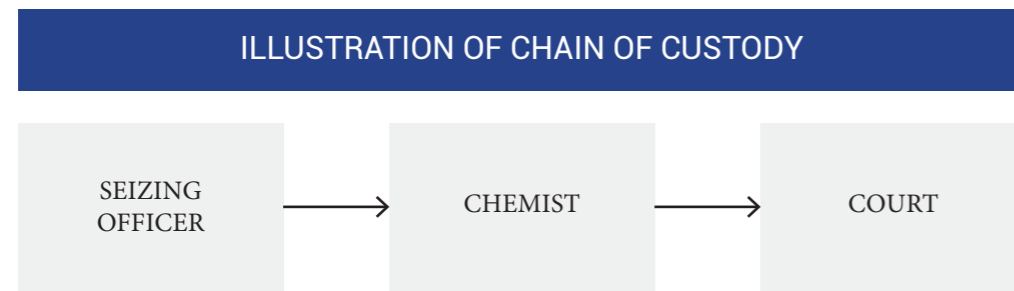
2. For digital evidence such as computers, cell phones, laptops, other similar gadgets, and storage peripherals (e.g. flash drives, CD) the same shall likewise be photographed, marked, and inventoried.
3. For documentary evidence, same procedure regarding photographing, marking, and inventory shall be followed.
4. For motor vehicles, firearms, and other digital evidence, these shall be subject to verification and processing by the LTO, FEO, and Cybercrime Division of the concerned law enforcement agency.

**C. Chain of Custody**

1. To ensure the preservation of the integrity and identity of the drug evidence, the Chain of Custody form shall indicate:
  - a. The time and place of the search;
  - b. The names of the officers who marked, inventoried, and sealed the seized items;
  - c. Location of the evidence at the time it was found. If the same was seized from an individual, it should be noted exactly where on the person the evidence was found (e.g. right front pocket);
  - d. Type of operation for which the evidence was obtained (e.g. evidence of a sale, implementation of search warrant);
  - e. Item numbers of the seized items in sequence consistent with the Inventory Sheet;
  - f. Detailed description of the article at the time it was seized;
  - g. Names of officers who took custody and in what capacity they received the evidence from one officer to another within the chain, including those who handled the evidence during media presentation; and
  - h. Time and date every time the transfer of custody of the same evidence was made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination and presentation in court.

2. The receipt of evidence must be acknowledged by all officers receiving the evidence, whether in the same or a separate document. Such receipt shall form part of the case folder of the transmitting unit.
3. The evidence custodian, when applicable, must maintain a logbook that contains information on:
  - a. the person who turned in the evidence for safekeeping;
  - b. the date and time thereof;
  - c. the person who received it; and
  - d. the person who requested the same for whatever purpose, who shall affix his name, signature, date, and time in the logbook.
4. When a piece of evidence is accordingly turned over, the custodian should check the identification mark on the piece of evidence to ensure that it is the same item and determine that the item is in the same condition as when it was discovered. Any change in the physical appearance of the evidence should be noted and recorded.

## FLOWCHART NO.6



### ROLE OF SCENE OF THE CRIME OPERATIVES (SOCO) IN DRUGS OPERATION

Generally, the presence of a SOCO team is a must if the subject of the Search Warrant is a clandestine laboratory, chemical warehouse or storage facility. The SOCO Team is composed of team leader, site safety control officer, forensic chemist, evidence log recorder/ custodian, photographer, sketcher, fingerprint specialist and/or driver/security. Other teams may be added in the composition of the Operating Team depending on the situation such as Medical, HAZMAT and Fire Fighting Teams.<sup>142</sup>

In instances of death during the implementation of a Search Warrant or which resulted from any anti-drug operation, the crime scene should be processed by a SOCO Team. The team shall perform the collection, documentation and forensic examination of collected physical evidence in relation to the death, with the end view of establishing facts relative to a crime scene. The SOCO Team shall be given priority to process the crime scene, in so far as the position and cause of death of the deceased is concerned. Thereafter, the operating team shall perform collection, documentation of evidence relating to violation of RA No. 9165, as amended.

<sup>142</sup> Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation, 2014, pp 36-37.

# CHAPTER 8:

## INQUEST PROCEEDING AND PRELIMINARY INVESTIGATION

## CHAPTER VIII: Inquest Proceeding and Preliminary Investigation

---

### A. Inquest

**Sec. 1. Concept** – An inquest proceeding is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not these persons should remain under custody and correspondingly be charged in court.<sup>143</sup>

**Sec. 2. Venue of Inquest Cases** – Unless otherwise directed by the Prosecutor General or the Provincial/City Prosecutor, those assigned to inquest duties shall discharge their functions during the hours of their designated assignments at the office of the inquest prosecutor in order to expedite and facilitate the disposition of inquest cases, unless otherwise designated by the Head Office.<sup>144</sup>

**Sec. 3. Date and Time of the Conduct of Inquest Proceedings** – Inquest proceedings shall be conducted during the regular office hours, or on such time as the circumstances so require.

**Sec. 4. Commencement** – The inquest proceedings shall be considered commenced upon presentation of the detained person and upon receipt by the inquest prosecutor of the following documents:

- Endorsement to the Prosecutor/Referral letter;
- Affidavit of arrest duly subscribed and sworn to before him/her by the arresting officer;
- Sworn statements of the complainant/s and witness/es; and
- Other supporting pieces of evidence gathered by the law enforcement authorities in the course of their investigation.<sup>145</sup>

The presence of the detained person may be dispensed with in the following cases:

- If s/he is confined in a hospital; or
- If s/he is detained in a place under maximum security.<sup>146</sup>

---

<sup>143</sup> Revised Manual for Prosecutors.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid, page 7.

<sup>146</sup> Ibid.

**Sec. 5. Incomplete Documents** – When the documents presented are incomplete to establish probable cause, the Inquest Prosecutor shall direct the law enforcement authorities to submit, in the proper form, the required documents within the prescribed period. Failure to submit the required documents within the prescribed period shall constrain the Inquest Prosecutor to order the release of the detained person/s.<sup>147</sup>

**Sec. 6. Matters to be Determined by the Inquest Prosecutor**

- Whether or not the warrantless arrest of the detained person was properly effected; and
- Whether or not there is probable cause to indict the arrested or detained person.

**Sec. 7. Determination of the Arrest by the Inquest Prosecutor** – The Inquest Prosecutor shall first determine if the arrest of the detained person was made in accordance with any of the following:

- When, in the presence of the Arresting Officer, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- When an offense has, in fact, just been committed, and the Arresting Officer has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it;
- When the person to be arrested is a prisoner who has escaped from a penal establishment or place where s/he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another;<sup>148</sup> and
- When the person arrested voluntarily surrendered and confessed to committing an offense. For this purpose, the Inquest Prosecutor may summarily examine the Arresting Officers on the circumstances surrounding the arrest or apprehension of the detained person.

**Sec. 8. Where Arrest was Properly Effected** – Should the inquest prosecutor find that the arrest was properly effected, the detained person shall be asked if s/he desires to avail himself/herself of a preliminary investigation and, if s/he does, the consequences thereof must be explained to him/ her adequately.

<sup>147</sup> Ibid.  
<sup>148</sup> Rules 113, Sec. 5 Revised Rules of Criminal Procedure.

The detained person must be assisted by a lawyer of his/her own choice. If s/he has none, the inquest prosecutor shall provide him/her the services of a public attorney.

The detained person, assisted by his/her lawyer, shall then be made to execute a waiver of the provisions of Article 125 of the Revised Penal Code<sup>149</sup>, as amended.

The preliminary investigation may be conducted by the inquest prosecutor himself/herself or by any other prosecutor to whom the case may be assigned by the Prosecutor General or the Provincial/ City Prosecutor, which investigation shall be terminated within fifteen (15) days from its commencement.<sup>150</sup>

**Sec. 9. Where Arrest was Not Properly Effected** – Should the inquest prosecutor find that the arrest was not made in accordance with the aforesaid provisions of the Revised Rules of Criminal Procedure, s/he shall:

- Recommend the release of the person arrested or detained;
- Prepare a resolution indicating the reasons for the action taken; and
- Forward the same, together with the record of the case, to the Prosecutor General or Provincial/City Prosecutor for their appropriate action.<sup>151</sup>

**Sec. 10. Release of Detained Person for Further Investigation** – Where the recommendation for the release of the detained person is approved by the Prosecutor General or by the Provincial/City Prosecutor, but the evidence on hand warrants the conduct of a regular preliminary investigation, the inquest prosecutor shall:

- Serve the order of release on the law enforcement officer having custody of the detainee; and
- Direct the said officer to serve upon the detainee the subpoena or notice of preliminary investigation, together with the copies of the charge sheet or complaint, affidavits or sworn statements of the complainant and his/her witness/es and other supporting evidence.<sup>152</sup>

**Sec. 11. Inquest Proper** – Where the detained person does not opt for a preliminary investigation or otherwise refuses to execute the required waiver, the Inquest Prosecutor shall proceed with the conduct of the inquest proceeding by

<sup>149</sup> Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel.  
<sup>150</sup> Revised Manual for Prosecutors.  
<sup>151</sup> Ibid.  
<sup>152</sup> Ibid, page 10.

examining the sworn statements/ affidavits of arrest and of the complainant and the witness/es and other supporting evidence submitted. The conduct of an inquest proceeding should never be initiated in the absence of an affidavit of arrest.

If necessary, the Inquest Prosecutor shall require the presence of the complaining witness/es and subject this witness/es to an informal and summary investigation or examination for the purposes of determining the existence of probable cause.<sup>153</sup>

**Sec. 12. Action to be Taken When there is a Finding of Probable Cause** – If the inquest prosecutor finds that probable cause exists, s/he shall forthwith prepare the resolution with the corresponding Complaint/Information with the recommendation that the same be filed in court. The Complaint/Information shall indicate the offense/s committed and the amount of bail recommended, if applicable.

Thereafter, the record of the case, together with the resolution and the Complaint/Information, shall be forwarded to the Prosecutor General or the Provincial/City Prosecutor for approval and subsequent filing before the proper Court.<sup>154</sup>

**Sec. 13. Action to be Taken When There is an Absence of Probable Cause.** – If the Inquest Prosecutor finds no probable cause to indict the arrested/detained person, s/he shall:

- Recommend the release of the arrested or detained person;
- Prepare a resolution of dismissal indicating therein the reason/s for the action taken; and
- Forward the record of the case to the Prosecutor General or the Provincial/City Prosecutor for their appropriate action.<sup>155</sup>

## **B. Inquest of Child in Conflict with the Law (CICL)**

**Sec. 1. Determination of Age** – The child in conflict with the law shall enjoy the presumption of minority and shall enjoy all the rights of a child in conflict with the law until proven to be eighteen (18) years old or older at the time of the commission of the offense. The age of the child shall be determined according to the following rules:<sup>156</sup>

- The best evidence to prove the age of a child is an original or certified true copy of the certificate of live birth;

<sup>153</sup> Ibid.

<sup>154</sup> Ibid, page 11.

<sup>155</sup> Ibid.

<sup>156</sup> 2019 Supreme Court Revised Rule On Children in Conflict with the Law, Sec. 5. (A.M. No. 02-1-18-SC).

- In the absence of a certificate of live birth, similar authentic documents such as baptismal certificates and school records or any pertinent document that shows the date of birth of the child;
- In the absence of the documents under paragraphs (a) and (b) of this Section due to loss, destruction, or unavailability, the testimony of the child; the testimony of a member of the family related to the child by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the child pursuant to Section 40, Rule 130 of the Rules on Evidence;<sup>157</sup> the testimonies of other persons; the physical appearance of the child; and other relevant evidence shall suffice.
- In case of doubt as to the age of the child, it shall be resolved in the child's favor.

**Sec. 2. Burden of Proof of Age** – Any person alleging the age of the child in conflict with the law has the burden of proving the age of such child. If the age of the child is contested prior to the filing of the information in court, a case for determination of age under summary proceeding may be filed before a court which shall render its decision within 24 hours from receipt of the appropriate pleadings of all the parties.<sup>158</sup>

**Sec. 3. Exemption from Criminal Liability** – A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program as provided for in Republic Act No. 9344<sup>159</sup>, as amended.

A child is deemed to be fifteen (15) years of age on the day of the fifteenth (15th) anniversary of his/her birthdate.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless s/he has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with the law.<sup>160</sup>

**Sec. 4. Procedure for Handling Children Exempted from Criminal Liability** – If it is determined at the initial contact that the child is fifteen (15) years of age or below, the procedure provided in Section 20, Republic Act No. 9344 and DDB Board Resolution No. 4, series of 2019, shall be observed as follows:

<sup>157</sup> Section 42, 2019 Amendments to the 1989 Revised Rules on Evidence. Family reputation or tradition regarding pedigree. – The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity, or adoption. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree.

<sup>158</sup> 2019 Supreme Court Revised Rule On Children in Conflict with the Law, Sec. 5. (A.M. No. 02-1-18-SC).

<sup>159</sup> An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Thereof, and for other Purposes.

<sup>160</sup> 2019 Supreme Court Revised Rule On Children in Conflict with the Law, Sec. 5. (A.M. No. 02-1-18-SC).



- The authority which will have an initial contact with the child, in consultation with the local social welfare and development officer, has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative.
- The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or "Bahay Pag-asa" managed by local governments units or licensed and/or accredited non-government organizations monitored by the Department of Social Welfare and Development.

**Sec. 5. Filing of Information** – If the Investigating Prosecutor finds probable cause to hold the child in conflict with the law for trial, there being discernment, and certifies that the child does not qualify for diversion, or that diversion is not appropriate, or the diversion failed at their level, the corresponding Resolution and Information shall be prepared for the approval by the Provincial or City Prosecutor, as the case may be. The child and the mother or father, or guardian, or in the absence thereof, the nearest relative, and the child's private counsel or lawyer from the Public Attorney's Office shall be furnished a copy of the approved Resolution and the Information.

Upon serving the subpoena and the affidavit of complaint, the prosecutor shall notify the Public Attorney's Office of such service, as well as the personal information, and the name and address of the guardian of the child in the conflict with the law. The Information shall be filed with the court within forty-five (45) days from the start of the preliminary investigation and must alleged that the child acted with discernment.<sup>161</sup>

### C. Preliminary Investigation

**Sec. 1. Concept** – A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.<sup>162</sup>

**Sec. 2. Commencement** – The preliminary investigation shall be considered commenced upon filing with the prosecution office of the following documents:

- Endorsement to the Prosecutor/Referral letter;

<sup>161</sup> Ibid.

<sup>162</sup> Revised Manual for Prosecutors – 2017 Edition Volume 1, page 22.

- Affidavit of arrest duly subscribed and sworn to before him/her by the arresting officer;
- Investigation report;
- Sworn statements of the complainant/s and witness/es; and
- Other supporting pieces of evidence gathered by the law enforcement authorities in the course of their investigation.

**Sec. 3. Matters to be determined** – Upon receipt of the documents, the prosecutor shall determine whether or not there is probable cause to indict the arrested/detained person.

### D. Common Provisions

**Sec 1. Documentary Checklists** – The prosecutor shall evaluate the following pieces of evidence during Preliminary Investigation and Inquest Proceedings:

- a. Buy-bust
  - Essential Documents:
    - ◇ Case Referral to the Prosecutor's Office;
    - ◇ Affidavit of Arrest;
    - ◇ Affidavit of Seizing Officer;
    - ◇ Affidavit of Poseur Buyer;
    - ◇ Inventory of Property Seized;
    - ◇ Accomplished Chain of Custody Form;
    - ◇ Request for and Result of Laboratory Examination/Chemical Analysis of seized items; and
    - ◇ Photographs of evidence.

- Supporting Documents, if applicable:
  - ◇ Affidavit of the Investigator on Case;
  - ◇ Affidavits of witness/es under Section 21 or Letters of Invitations to the witness/es. (In the absence of one of the witness/es, a statement under oath setting forth the justification for the absence of one of the witness/es);
  - ◇ Affidavits of Other Witness/es;
  - ◇ Investigation Report;
  - ◇ Spot Report;
  - ◇ Request for and Result of Physical/Medical Examination and Laboratory Screening Test of the suspects;
  - ◇ Receipt of Inventory of Property Seized;
  - ◇ Receipt of Turn-Over of Evidence;
  - ◇ Receipt of Turn-Over of Arrested Suspect/s;
  - ◇ Acknowledgment Receipt of Drug Evidence from the Chemist;
  - ◇ Photographs of the Suspect/s; and
  - ◇ Booking Sheet and Arrest Report.

b. Seizure by Virtue of a Search Warrant:

- Essential Documents:
  - ◇ Case Referral to the Prosecutor's Office;
  - ◇ Copy of the Search Warrant;
  - ◇ Affidavit of Arrest;
  - ◇ Affidavit of Seizing Officer;
  - ◇ Inventory of Property Seized;
  - ◇ Accomplished Chain of Custody Form;

- ◇ Request for and Result of Laboratory Examination/Chemical Analysis of Seized items; and
- ◇ Photographs of evidence.

- Supporting Documents, if applicable:

- ◇ Affidavit of the Investigator on Case;
- ◇ Affidavits of witness/es under Section 21 or Letters of Invitations to the witness/es. (In the absence of one of the witness/es, a statement under oath setting forth the justification for the absence of one of the witness/es);
- ◇ Affidavits of Other Witness/es;
- ◇ Investigation Report;
- ◇ Spot Report;
- ◇ Certification of Orderly Search;
- ◇ Request for and Result of Physical/Medical Examination and Laboratory Screening Test of the Suspects;
- ◇ Receipt of Inventory of Property Seized;
- ◇ Receipt of Turn-Over of Evidence;
- ◇ Receipt of Turn-Over of Arrested Suspect/s;
- ◇ Acknowledgment Receipt of Drug Evidence from the Chemist;
- ◇ Photographs of the Suspect/s;
- ◇ Photographs of the Searched Premises;
- ◇ Booking Sheet and Arrest Report; and
- ◇ Application for Search Warrant.

c. *In Flagrante Delicto* Arrests and Seizures

- Essential Documents:
  - ◇ Case Referral to the Prosecutor's Office;
  - ◇ Affidavit of Arrest;
  - ◇ Affidavit of Seizing Officer;
  - ◇ Inventory of Property Seized;
  - ◇ Accomplished Chain of Custody Form;
  - ◇ Request for and Result of Laboratory Examination/Chemical Analysis of Seized Items; and
  - ◇ Photographs of evidence.
- Supporting Documents, if applicable:
  - ◇ Affidavit of the Investigator on Case;
  - ◇ Affidavits of witness/es under Section 21 or Letters of Invitations to the witness/es. (In the absence of one of the witness/es, a statement under oath setting forth the justification for the absence of one of the witness/es);
  - ◇ Affidavits of Other Witness/es;
  - ◇ Investigation Report;
  - ◇ Spot Report;
  - ◇ Request for and Result of Physical/Medical Examination and Laboratory;
  - ◇ Screening Test of the Suspects;
  - ◇ Receipt of Inventory of Property Seized;
  - ◇ Receipt of Turn-Over of Evidence;
  - ◇ Receipt of Turn-Over of Arrested Suspect/s;

- ◇ Acknowledgment Receipt of Drug Evidence from the Chemist;
- ◇ Photographs of the Suspect/s; and
- ◇ Booking Sheet and Arrest Report.

## Sec 2. Resolutions

### A. Periods

- Termination of Inquest Proceedings – The Inquest Proceedings must be terminated within the period prescribed, which shall be counted from the time of arrest, under the provisions of Article 125 of the Revised Penal Code, as amended. The Inquest Proceeding for violation of RA 9165, being a grave offense, must be terminated within 36 hours from the time of arrest.
- Action to be Taken When the Arrested Person Executes a Waiver of Article 125 of the Revised Penal Code – Should the arrested person execute a waiver, the Inquest Prosecutor shall set the case for preliminary investigation which shall be terminated within fifteen (15) days from the execution of the waiver.
- Termination of Preliminary Investigation - The preliminary investigation of illegal drugs cases shall be terminated within thirty (30) days from the date of filing.<sup>163</sup>

### B. Additional Contents in the Resolution

The observance or non-observance of the guidelines set forth in the case of *People of the Philippines v. Romy Lim y Miranda*<sup>164</sup> should be set forth with clarity in the resolution. The guidelines read:

- In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of RA 9165, as amended, and its IRR.
- In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
- If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, s/he must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

<sup>163</sup> RA 9165, Sec. 90; Revised Manual for Prosecutors – 2017 Edition Volume 1, page 47.

<sup>164</sup> *People v. Romy Lim*, G.R. No. 231989, September 4, 2018.

### C. Parties Who Need to be Furnished with a Copy of the Resolution

- The law enforcement agency, through its representative, respondent/s and their counsels, if any shall be furnished with a copy of the Resolution. However, if the parties are represented by counsel and the latter's appearance is formally entered in the record, the counsel, not the party, shall be given a copy of the resolution.<sup>165</sup>
- If the respondent is a child in conflict with the law, the child and the mother or father, or guardian, or in the absence thereof, the nearest relative, and the child's private counsel or lawyer from the Public Attorney's Office.<sup>166</sup>

### D. Dismissed Cases Subject for Automatic Review by the Secretary of Justice

For violations of RA 9165, the entire records of the case shall be elevated to the Secretary of Justice within three (3) days from issuance of the resolution dismissing the complaint or appeal, as applicable, and the parties involved shall be notified accordingly. Notwithstanding the automatic review, respondent shall be immediately released from detention unless detained for other causes.

### E. Release of Recovered Articles

The Inquest or Investigating Prosecutor shall, with the prior approval of the Prosecutor General or the Provincial/City Prosecutor, and subject to applicable laws, order the release of recovered articles to their lawful owner or possessor, subject to the conditions that:

- There is a written request for their release;
- The person requesting the release is not a respondent in the case;
- The person requesting the release of said articles is shown to be the lawful owner or possessor thereof;
- The requesting party undertakes under oath to produce said articles before the court when so required;
- The requesting party, if s/he is a material witness to the case, affirms or reaffirms his/her statement concerning the case and undertakes under oath to appear and testify before the court when so required;

- The recovered articles are not the instruments, or tools in the commission of the offense nor the proceeds thereof;
- Photographs of the recovered articles are first taken and duly certified to by the police evidence custodian as accurately representing the evidence in his custody; and
- There is no opposition from the representative of the law enforcement agency.

During the pendency of the case in the Regional Trial Court, no property, or income derived from the unlawful act (including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, unless they are the property of a third person not liable for the unlawful act) shall be disposed, alienated or transferred and the same shall be in custodia legis and no bond shall be admitted for the release of the same.<sup>167</sup>

Objects of lawful commerce, even if owned by a third person not liable for the offense, which were confiscated in the course of the enforcement of RA 9165, may not be released by the trial courts pending trial and judgment.<sup>168</sup>

## Sec. 3. Information

### A. Designation of Offense

To properly inform the accused of the nature and cause of the accusation, the Information shall state whenever possible:

- The designation given to the offense by the statute; and
- If there is no such designation, reference shall be made to the section of the law punishing it.<sup>169</sup>

### B. Parties to be Copy Furnished

Generally, the Prosecutor need not copy furnish the parties a copy of the Information. An exception is when the accused is a child in conflict with the law. The following must be given a copy of the Information: the child and the mother or father, or guardian, or in the absence thereof, the nearest relative, and the child's private counsel or lawyer from the Public Attorney's Office.<sup>170</sup>

<sup>165</sup> Revised Manual for Prosecutors – 2017 Edition Volume 1, page 46.

<sup>166</sup> A.M. No. 02-1-18-SC, January 22, 2019.

<sup>167</sup> RA 9165, Sec. 20.

<sup>168</sup> PDEA v. Brodett, G.R. No. 196390, September 28, 2011.

<sup>169</sup> Senator Leila M. De Lima v. Hon. Juanita Guerrero, et. al. G.R. No. 229781, October 10, 2017.

<sup>170</sup> A.M. No. 02-1-18-SC, January 22, 2019.

# CHAPTER 9:

## PREPARATIONS FOR TRIAL

## CHAPTER IX: Preparations for Trial

---

**Sec. 1. Review and Study the Records of the Case** – As far as practicable, at least five (5) days prior to the pre-trial or preliminary conference, as the case may be, or sooner, the Prosecutor and the apprehending team shall hold a case conference to better aid the former in the pre-trial or preliminary conference proper.

The Prosecutor shall notify the law enforcement officers and witness/es in writing or through other means of communication of the schedule of the case conference. The Prosecutor and the law enforcement officer may be reported to their respective superiors in the event of their failure to attend the scheduled case conference.

The primary objective of the case conference is to discuss certain matters that the Prosecutor and the apprehending team may use for the abbreviation of the proceedings in the case.

The following matters, among others, may be discussed during the case conference:

- Consolidation of the original copies of documentary evidence;
- Identification of key witness/es for presentation in court;
- Identification of witness/es whose prospective testimonies will be submitted for stipulation;
- Presentation of timeline of events;
- Security arrangements;
- Prospective dates of trial;
- Determination of the propriety of conducting an ocular inspection and availing of other pre-trial measures and remedies;
- Identification of related cases or charges;
- Update of case folder of apprehending team or case officer;
- Other matters analogous to the foregoing.

**Sec. 2. Ocular Inspection** – The conduct of an ocular inspection is a pre-trial measure that was introduced as part of Section 21 of RA 9165, as amended by RA 10640.

A. **Purpose.** An ocular inspection has a two-fold purpose:

1. To suppress or prevent the numerous malpractices previously committed by law enforcement officers and other handlers of drug evidence, such as the tampering, switching, adulteration, recycling, and planting of evidence;
2. To protect the law enforcement officers and other handlers of the evidence that have shown compliance with RA 9165, as amended, from countercharges and harassment suits by bolstering the disputable presumption that official duty has been regularly performed and establishing that the integrity and evidentiary value of the drug evidence have been preserved.

B. **Motion.** Within seventy-two (72) hours from the filing of the information in court, an ocular inspection and the taking of representative samples shall be promptly ordered and conducted. In the event the court does not order the conduct of an ocular inspection and taking of representative samples *motu proprio*, the Prosecution may promptly move for the conduct of the same.

C. **Subjects.** The ocular inspection and the taking of representative samples may be had over the following subjects and in the manner provided herein, viz:

1. Dangerous Drugs;
2. Controlled Precursors and Essential Chemicals (CPECs);
3. Instruments, Paraphernalia, Equipment, Apparatuses;
4. Crime Scene;
5. Other pieces of evidence.

D. **Activities.** The following may be done during the ocular inspection:

1. Identification of markings by the Seizing Officer;
2. Identification of markings by the Forensic Chemist;

3. Comparison of the photographs taken during the inventory with the actual, physical evidence;

4. Taking of representative samples.<sup>171</sup> Representative samples shall be taken and duly weighed and recorded by the forensic laboratory, which conducted the examination of the seized drugs or controlled chemicals for presentation as evidence in court. Maximum quantities of samples to be retained are as follows:

a. Controlled Precursors and Essential Chemicals:

- Not more than 2.5 liters for liquid chemicals;
- Not more than ten (10) grams for non-liquid chemicals;
- Where the chemical is in its original container, samples to be retained shall not be more than one container, e.g. glass bottle or can or polyethylene container or barrel or drum.

b. Dangerous Drugs

- Not more than fifteen (15) grams each of heroin, morphine, opium, cocaine, or other dangerous drugs such as, but not limited to, MDMA, LSD, PMA, GHB, TMA, marijuana resin, or marijuana resin oil;
- Not more than fifty-five (55) grams of methamphetamine hydrochloride or amphetamine;
- Not more than 510 grams of marijuana leaves;
- Not more than ten (10) plants of opium poppy, coca bush, ephedra or marijuana;
- Not more than fifteen (15) grams of other dangerous drugs.

Where the amount of seized drugs is equal to or less than the prescribed amount of retention above, all the seized items shall be preserved as evidence in court until the court terminates the case.

<sup>171</sup> Please refer to DDB Regulation No. 1, series of 2002, Section 4.

5. Sealing and safekeeping of representative samples;<sup>172</sup>

- a. The representative samples of Dangerous Drugs or Controlled Precursors and Essential Chemicals (CPECs) shall be appropriately secured in the evidence room of the Laboratory Service, Crime Laboratory, or the Forensic Chemistry Division of the PDEA, PNP, and NBI, respectively.
- b. Where there is an operational necessity to identify the specific links between the two or more samples, origin of seized drug, drug distribution patterns, and methods used for clandestine drug manufacture, particularly with regard to methamphetamine hydrochloride or “shabu,” samples that may be taken for such examination shall not be more than ten (10) grams of samples from each package/bag selected. Where a written request is made by a foreign counterpart agency to PDEA for drug samples for the purpose of drug profiling, PDEA shall ask for leave of court to transfer such samples to the requesting party. Such transfer shall be done through import permit/authorization issued by the competent authority of the requesting party and an export permit granted by PDEA.
- c. In all cases, whenever applicable, the custodian shall refer to the Material Safety Data Sheet (MSDS) for further guidance on the proper handling and continued custody of the representative samples.

**Sec. 3. Destruction**<sup>173</sup> – Within twenty-four (24) hours from the termination of the ocular inspection and the taking of representative samples, the Court shall order the destruction of the Dangerous Drugs or Controlled Precursors and Essential Chemicals.

In the event the court fails to order the destruction of the same, the Prosecution shall move for the issuance of an order of destruction, taking into consideration the available resources of the Philippine Drug Enforcement Agency for the destruction of Dangerous Drugs or Controlled Precursors and Essential Chemicals.

- A. The destruction or disposal or burning of seized dangerous drugs, plant sources of dangerous drugs or controlled chemicals shall be done in public and witnessed by the following:

<sup>172</sup> Ibid.

<sup>173</sup> Please refer to DDB Regulation No. 1, series of 2002, section 6.

1. The accused or the person from whom subject items were confiscated, or his/her representative or counsel or a member of the Public Attorney’s Office appointed by the Secretary of Justice;
  2. A representative from the media;
  3. A representative from DOJ;
  4. Civil security groups; and
  5. Any elected public official.
- B. Controlled chemicals and dangerous drugs shall be disposed of by means of the following methods:
1. Thermal destruction method in accordance with applicable laws. The PDEA may engage the provisional services of third parties with thermal facilities covered by valid and subsisting permits and clearances issued by appropriate government agencies; or
  2. Other lawful appropriate methods as may be authorized by the Board, in consultation with DENR.
- C. Plant sources of dangerous drugs such as marijuana plant shall be destroyed by burning on the site of eradication activity and in open field. Thereafter, the burnt marijuana plant shall be buried underground.

Within twenty-four (24) hours from the termination and completion of the destruction or disposal proceedings, the Dangerous Drugs Board, through the Director General of PDEA or its Regional Director, as the case may be, shall issue a sworn certification as to the fact of destruction or burning of the subject items, which together with the representative samples in the custody of PDEA, shall be submitted to the court having jurisdiction over the case.

In the event that the court does not have adequate facilities for the safekeeping of the representative samples during the pendency of the proceedings in the criminal case, the Prosecution shall move for the retention by the Laboratory Service of the representative samples.



# CHAPTER 10:

## PLEA BARGAINING AND PRE-TRIAL

## CHAPTER X: Plea Bargaining and Pre-Trial

---

**Sec. 1. Plea Bargaining** – It is a process where the accused usually pleads guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.<sup>174</sup>

### A. Applicable Rules in Plea Bargaining

1. Plea bargaining is now allowed for drugs cases.<sup>175</sup>
2. Plea bargaining may be entertained by the Prosecution at any stage of the proceedings.
3. The courts shall not allow plea bargaining if the objections to the plea bargaining are valid and supported by evidence to the effect that the offender is under the following circumstances:
  - a. Recidivist;
  - b. Habitual offender;
  - c. Known in the community as a drug addict and troublemaker;
  - d. One who has undergone rehabilitation but had a relapse, or has been charged many times; or
  - e. When the evidence of guilt of charge is strong.<sup>176</sup>
4. Actions to take during instances where there are conflicts between DOJ Circular No. 027 and AM No. 18-03-16-SC:
  - a. As regards offer for plea bargain for violation of Section 5 involving shabu (less than 5 grams) and marijuana (less than 300 grams), manifest with the Court that the acceptable plea bargaining for the prosecution will be under Section 11, par. 3 of RA 9165.

---

<sup>174</sup> Revised Manual for Prosecutors – 2017 Edition Volume 1, page 77.

<sup>175</sup> Estipona, Jr. v. Lobrigo, G.R. No. 226679, August 15, 2017.

<sup>176</sup> OCA-Circular No. 80-2019.

- b. As regards plea bargaining for violation of Section 7 (employees of drug den), reject the proposed plea outright and continue with the proceedings.
  - c. As regards plea bargaining for violation of Section 7 (visitors of drug den), manifest with the Court that the acceptable plea bargaining for the prosecution will be under section 12 or section 15.
  - d. As regards offer for plea bargain for violation of Section 11 involving marijuana (300 grams or more), reject the proposed plea outright and continue with the proceedings.
  - e. As regards offer for plea bargain for violation of Section 11 involving shabu, opium, morphine, heroin, cocaine, et. al. except marijuana (5 grams or more), reject the proposed plea outright and continue with the proceedings.
  - f. As regards plea bargaining for violation of Section 13 pertaining to shabu et. al (5 grams of more) or marijuana (300 grams or more), reject the proposed plea outright and continue with the proceedings.
  - g. As regards plea bargaining for violation of Section 13 pertaining to shabu et. al (less than 5 grams) and marijuana (less than 300 grams), manifest with the Court that the acceptable plea bargaining for the prosecution will be under Section 11, par. 3 of RA 9165.
5. In cases where a minor is charged under RA 9165 as amended, the minor shall be proceeded against pursuant to the provisions of Republic Act No. 9344 as amended.

**B. Guidelines for the Prosecutor in Plea Bargaining**

Where the accused offers a plea bargain during arraignment or pre-trial or after the trial on the merits has commenced, the trial prosecutor shall be guided by the following rules and procedure:

- 1. All offers for plea bargaining must be initiated in writing by way of a formal motion filed by the accused in court.

- 2. If the proposed plea bargain is not allowed or goes beyond what is allowed under the guidelines of DOJ Circular No. 027, June 26, 2018, the Trial Prosecutor shall reject the proposed plea bargain outright and continue with the proceedings.<sup>177</sup>
- 3. The Trial Prosecutor may also reject the proposed plea bargain where the offender is a recidivist, a habitual offender, known in the community as a drug addict and troublemaker, or one who has undergone rehabilitation but had a relapse, or has been charged many times, or when the evidence of guilt is strong.
- 4. Where the accused offers a plea bargain which is allowed under DOJ Circular No. 027, June 26, 2018, the trial prosecutor shall:
  - a. Request the court to order that a drug dependency assessment<sup>178</sup> be administered on the accused pursuant to A.M. 18-03-16-SC. The drug dependency report shall be a condition sine qua non for the prosecution to give its consent to the plea bargain.
  - b. Request for time to obtain the written approval of the City Prosecutor or Provincial Prosecutor concerned or from any prosecutor with delegated authority to approve plea bargains other than the Trial Prosecutor.
  - c. Where the offer to plea bargain was made after the trial on the merits has commenced, request for time to study the matter and make a careful evaluation to determine whether the evidence of the prosecution is sufficient to convict. If the Trial Prosecutor decides to accept the plea bargain, s/he shall then submit a written memorandum to the City Prosecutor, Provincial Prosecutor, or approving prosecutor concerned justifying why the plea bargain should be accepted.
  - d. Submit the to the court the written approval to form part of the records.
- 5. In the event that the court insists on approving a plea bargain that is not allowed or goes beyond what is allowed under these guidelines, the Trial Prosecutor shall interpose his/her vigorous objection in open court and manifest that the State does not give its consent to the plea bargain.

<sup>177</sup> See Sayre v. Hon Xenos, G.R. Nos. 244413, 244415-16, February 18, 2020.

<sup>178</sup> A drug dependency assessment is a procedure conducted by a DOH-accredited physician to evaluate the extent of drug abuse of a person and to determine whether he/she is a drug dependent or not, which includes history taking, intake interview, determination of the criteria for drug dependency, mental and physical status, and the detection of dangerous drugs in body specimens through laboratory procedures. (Dangerous Drugs Board Regulation No. 3, Series of 2007).

**Sec. 2. Pre-trial** – A pre-trial is a process whereby the accused and the Prosecutor work out a naturally satisfactory disposition of a case subject to court approval in order to expedite the trial of the case.<sup>179</sup>

The conduct of a pre-trial conference is mandatory in all criminal cases.<sup>180</sup> It is scheduled after arraignment and within thirty (30) days of the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court.<sup>181</sup>

The pre-trial order binds the parties, limits the trial to matters not disposed of, and controls the course of the action taken during the trial, unless modified by the court to prevent manifest injustice.<sup>182</sup>

A. What Takes Place During Pre-Trial

**1. Plea Bargaining**

The process through which the accused pleads guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.<sup>183</sup>

**2. Stipulation of Facts**

This refers to the agreement of the parties on some facts admitted, some facts covered by judicial notice,<sup>184</sup> judicial admissions<sup>185</sup> or on matters not otherwise disputed by them.

In cases requiring the presentation of government witness/es or evidence, the Trial Prosecutor should exert every effort to secure the admissibility of certain documentary evidence, e.g. chemist report, affidavit of seizing officer and arresting officer, photographs of the seized dangerous drugs, and the like, for expediency of the court proceedings.

The list of witnesses should be qualified by the following statement: “that other witnesses may be presented in the course of the trial.”

Whenever necessary, the counter-affidavit of the accused, which was submitted during the preliminary investigation, may be resorted to or availed of to demonstrate or establish the defense’s theory.<sup>186</sup>

<sup>179</sup> Revised Manual for Prosecutors – 2017 Edition Volume 1, page 81.  
<sup>180</sup> Sec. 1, par. 1, Rule 118, Revised Rules of Criminal Procedure; Supreme Court Circular No. 38-98.  
<sup>181</sup> Revised Manual for Prosecutors – 2017 Edition Volume 1, page 81.  
<sup>182</sup> Sec. 4, Rule 118, Revised Rules of Criminal Procedure.  
<sup>183</sup> Revised Manual for Prosecutors – 2017 Edition Volume 1, page 82.  
<sup>184</sup> Sec. 1, Rule 129, Revised Rules of Criminal Procedure.  
<sup>185</sup> Ibid.  
<sup>186</sup> Revised Manual for Prosecutors – 2017 Edition Volume 1, page 83.

**3. Marking of Exhibits**

**4. Admission or Waiver of Objection to the Admissibility of Evidence**

**5. Modification of the Order of Trial**

If the Accused admits the charge but interposes a lawful defense e.g. self-defense); and

**6. Such Other Matters**

Matters that will promote a fair and expeditious trial of the criminal and civil aspects of the case.<sup>187</sup>

<sup>187</sup> Sec. 1, Rule 118, Revised Rules of Criminal Procedure.

# CHAPTER 11:

## POST-PROSECUTION

## CHAPTER XI: Post-Prosecution

---

**Sec. 1. Forfeiture** – It is the loss of goods or chattels, as a punishment for some crime or misdemeanor in the party forfeiting, and as a compensation for the offense and injury committed. Confiscation, as distinguished from forfeiture, is but a consequence of the latter.

Promptly after the conviction of an accused, if the court fails to set a hearing for the forfeiture of the properties or assets of the accused derived from or used as instruments in the commission of any offenses under RA 9165, as amended, and other related laws, the Prosecution shall move for the forfeiture of the same in favor of the government, taking into consideration, as far as applicable, the following:

- RA 9165, as amended by Republic Act No. 10640;
- Republic Act No. 9160, as amended by Republic Act Nos. 9194, 10167, and 10365;
- Implementing Rules and Regulations of RA 9165 and Republic Act No. 9160;
- The Revised Penal Code, Articles 25 and 45;
- Republic Act No. 1379, Republic Act No. 3019, Republic Act No. 7080;<sup>188</sup>
- DDB Regulation No. 1, series of 2014;
- A.M. No. 05-11-04-SC;<sup>189</sup>
- OCA Circular No. 71-2017;<sup>190</sup>
- OCA Circular No. 26-2018;<sup>191</sup>
- OCA Circular No. 02-2019;<sup>192</sup>

---

<sup>188</sup> For public officers and employees. Republic Act No. 1379, Republic Act No. 3019, Republic Act No. 7080.

<sup>189</sup> Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as amended.

<sup>190</sup> Remittance of Money Exhibit, Proceeds from Sale of Exhibits and Fines Imposed in Drug Cases.

<sup>191</sup> Remittance of Fines, Money Exhibit, Proceeds from Sale of Exhibits, Forfeited Cash Bonds, and Net Interest Income.

<sup>192</sup> Use of the Supreme Court Official Receipt in the Collection of Fines and Proceeds from the Sale of Exhibits in Drugs Cases.

- UNODC Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime; and
- Asset Recovery Handbook: A Guide for Practitioners.<sup>193</sup>

**Sec. 2. Petition for Certiorari** – In the event a case is dismissed or the accused therein acquitted and the Prosecution or the apprehending team has reasonable grounds to believe that dismissal or acquittal was made with grave abuse of discretion amounting to lack or in excess of the jurisdiction of the court, a petition for certiorari under and pursuant to Rule 65 of the Rules of Court, shall be filed before the appropriate appellate court within the reglementary period.

A. **Procedure.** The Prosecution shall submit an endorsement to the Office of the Solicitor General, which shall be accompanied by the following:

1. Written conformity of the Prosecutor General or his authorized representative;
2. Letter of endorsement with a case summary containing the facts of the case; the alleged grave abuse of discretion amounting to lack or excess jurisdiction; a statement of the date the notice of decision, judgment or resolution, or other subject thereof was received; the date the motion for reconsideration, if any, was filed; the notice date of the denial of the motion for reconsideration; and the deadline for the filing of the petition;
3. Legible Duplicate Original or Certified True Copies of the decision, judgment, resolution or order subject of the request to file petition. The certification must be secured from the authorized personnel of the court issuing the same. Submission of photocopies, not certified in accordance therewith, shall not be considered sufficient compliance;
4. Certification under oath that the Prosecution has not commenced any other action or proceeding involving the same issues in the Court of Appeals, the Supreme Court, or any other tribunal or agency.

B. **Period.** The period of filing a petition for certiorari under Rule 65 of the Rules of Court must be strictly complied with. Under Section 4, Rule 65 of the Rules of Court, it is mandated that the petition for certiorari shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is

timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

The 60-day period is non-extendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.<sup>194</sup>

In transmitting the request for filing a petition for certiorari under Rule 65, the Prosecutor General must transmit the request to the OSG within a maximum period of fifteen (15) days from receipt of notice of the judgment, order, resolution or from notice of the denial of the motion for reconsideration/new trial.

In case the request for filing of a petition for certiorari was endorsed beyond the reglementary period stated herein or by any party other than the Prosecutor General, the OSG shall immediately return the complete records of the case to the endorsing party for its appropriate action.

**Sec. 3. Monitoring of Drug Cases** – The PDEA shall be responsible for the monitoring of drug cases filed and pending before the Prosecution Offices, trial courts, Court of Appeals, and Supreme Court. All concerned government agencies involved in the prosecution of illegal drug cases are enjoined to extend assistance to the PDEA in the monitoring of cases. All prosecutor offices are required to promptly furnish PDEA with its resolutions, orders, information, and other pleadings and processes by sending copies to the official e-mail address of PDEA’s Legal and Prosecution Service.

<sup>193</sup> Jean-Pierre Brun & Anastasia Sotiropoulou & Larissa Gray & Clive Scott & Kevin M. Stephenson, Asset Recovery Handbook: A Guide for Practitioners, STAR Initiative, Washington, D.C: World Bank, 2011, [https://star.worldbank.org/sites/star/files/asset\\_recovery\\_handbook\\_o.pdf](https://star.worldbank.org/sites/star/files/asset_recovery_handbook_o.pdf), accessed on July 1, 2020.

<sup>194</sup> See Manila Electric Co. v. N.E. Construction Inc., August 31, 2016, G.R. No. 208181.

# CHAPTER 12:

## MISCELLANEOUS PROVISIONS



## **CHAPTER XII:** **Miscellaneous Provisions**

---

**Sec. 1. Effectivity** - The effectivity date of the Manual is August 12, 2020.

**Sec. 2. Superseding Clause** – The provisions of all executive issuances or regulations not consistent with the provisions of this Manual are hereby deemed amended or superseded accordingly.

**Sec. 3. Undertaking** – The agencies and offices that have taken part in the writing and promulgation of this Manual are hereby bound by its provisions. Accordingly, any provisions, rules, or regulations inconsistent with the provisions of this Manual shall be amended, revised, or superseded accordingly to conform to this Manual.

# APPENDICES

## APPENDICES

---

- APPENDIX 1** Tables I and II of the Annex of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- APPENDIX 2** Chain of Custody Form for Drug Evidence
- APPENDIX 3** Chain of Custody Form for Non-Drug Evidence
- APPENDIX 4** Chain of Custody Form for Laboratory
- APPENDIX 5** Investigation Data Form
- APPENDIX 6** Certificate of Inventory of Seized Items Form
- APPENDIX 7** Sample Affidavit of Poseur Buyer
- APPENDIX 8** Sample Affidavit of Seizing Officer
- APPENDIX 9** Sample Affidavit of Investigator
- APPENDIX 10** Sample Affidavit of Arresting Officer
- APPENDIX 11** Salient Features of A.M. No. 21-02-01-SC

**Appendix 1: Tables I and II of the Annex of the 1988 UN Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances<sup>195</sup>**

**Revised Tables including the amendments made by the Commission on Narcotic Drugs in force as of 23 November 1992**

| TABLE 1                              | TABLE 2                |
|--------------------------------------|------------------------|
| N-acetylanthranilic acid             | Acetic anhydride       |
| Ephedrine                            | Acetone                |
| Ergometrine                          | Anthranilic acid       |
| Ergotamine                           | Ethyl ether            |
| Isosafrole                           | Hydrochloric acid      |
| Lysergic acid                        | Methyl ethyl ketone    |
| 3,4-methylenedioxyphenyl-2-propanone | Phenylacetic acid      |
| 1-phenyl-2-propanone                 | Piperidine             |
| Piperonal                            | Potassium permanganate |
| Pseudoephedrine                      | Sulphuric acid         |
| Safrole                              | Toluene                |

The salts of the substances listed in this Table whenever the existence of such salts is possible.

The salts of the substances listed in this Table whenever the existence of such salts is possible. (the salts of hydrochloric acid and sulphuric acid are specifically excluded)

<sup>195</sup> Annex, 1988 Convention Against Illicit Traffic in Narcotics, Drugs, and Psychotropic Substances, available at <[https://treaties.un.org/doc/Treaties/1990/11/19901111%2008-29%20AM/Ch\\_VI\\_19p.pdf](https://treaties.un.org/doc/Treaties/1990/11/19901111%2008-29%20AM/Ch_VI_19p.pdf)>, accessed on July 1, 2020. The treaty entered into force on 11 November 1990. The Philippines ratified the Convention on 7 March 1996.

**Appendix 2: Chain of Custody Form for Drug Evidence**

**CHAIN OF CUSTODY FORM FORM (DRUG EVIDENCE)**

Nature of Case: Violation of Republic Act 9165

Name of Subject/s: \_\_\_\_\_

Time, Date, Place of Occurrence: \_\_\_\_\_

\_\_\_\_\_

Seizing Officers/Operating Unit \_\_\_\_\_

Description of Evidence/s: (PLEASE REFER TO RECEIPT INVENTORY AND PROPERTY SEIZED)

Photographer: \_\_\_\_\_

**TURNED OVER BY** : \_\_\_\_\_  
(Name and Designation)

Agency / Address : \_\_\_\_\_

Time and Date : \_\_\_\_\_

Remarks : \_\_\_\_\_

**RECEIVED BY** : \_\_\_\_\_  
(Name and Designation)

Agency / Address : \_\_\_\_\_

Time and Date : \_\_\_\_\_

Remarks : \_\_\_\_\_

**TURNED OVER BY** : \_\_\_\_\_  
(Name and Designation)

Agency / Address : \_\_\_\_\_

Time and Date : \_\_\_\_\_

Remarks : \_\_\_\_\_

**Appendix 3: Chain of Custody Form for Non-Drug Evidence**

**CHAIN OF CUSTODY FORM FORM  
(NON-DRUG EVIDENCE)**

Nature of Case: Violation of Republic Act 9165  
 Name of Subject/s: \_\_\_\_\_  
 Time, Date, Place of Occurrence: \_\_\_\_\_  
 \_\_\_\_\_

Seizing Officers/Operating Unit \_\_\_\_\_

Description of Evidence/s: (PLEASE REFER TO RECEIPT INVENTORY AND PROPERTY SEIZED)

Photographer: \_\_\_\_\_  
 TURNED OVER BY : \_\_\_\_\_  
 (Name and Designation)

Agency /Address : \_\_\_\_\_  
 Time and Date : \_\_\_\_\_  
 Remarks : \_\_\_\_\_

RECEIVED BY : \_\_\_\_\_  
 (Name and Designation)

Agency /Address : \_\_\_\_\_  
 Time and Date : \_\_\_\_\_  
 Remarks : \_\_\_\_\_

TURNED OVER BY : \_\_\_\_\_  
 (Name and Designation)

Agency /Address : \_\_\_\_\_  
 Time and Date : \_\_\_\_\_  
 Remarks : \_\_\_\_\_

**Appendix 4: Chain of Custody Form for Laboratory**

No: \_\_\_\_\_

**CHAIN OF CUSTODY FORM  
(For Laboratory)**

Date \_\_\_\_\_

DESCRIPTION OF EVIDENCE:

| REMARKS | ITEM  | QUANTITY |
|---------|-------|----------|
| _____   | _____ | _____    |
| _____   | _____ | _____    |
| _____   | _____ | _____    |

DELIVERED BY: \_\_\_\_\_  
 (Name and Designation)

AGENCY AND ADDRESS: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

RECIEVED BY: \_\_\_\_\_  
 (Name, Designation and Signature)

ACKNOWLEDGMENT RECIEPT NO \_\_\_\_\_ DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

REMARKS: \_\_\_\_\_

EXAMINED BY: \_\_\_\_\_  
 (Name, Designation and Signature)

LAB CASE NO \_\_\_\_\_ DATE: \_\_\_\_\_


CHEMISTRY REPORT NO: \_\_\_\_\_ DATE: \_\_\_\_\_

TURN-OVER RECEIPT NO: \_\_\_\_\_ DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

RECIEVED BY EVIDENCE CUSTODIAN: \_\_\_\_\_  
 (Name, Designation and Signature)

ACKNOWLEDGMENT RECIEPT NO \_\_\_\_\_ DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

**Appendix 5: Investigation Data Form**



Republika ng Pilipinas  
**KAGAWARAN NG KATARUNGAN**  
 Department of Justice  
 Manila  
**National Prosecution Service**  
 (office)  
 (address)

*To be accomplished by the Office*

|   |                            |
|---|----------------------------|
| <b>DATE RECEIVED</b> _____                              | <b>DOCKET NUMBER</b>       |
| Time Received _____                                     |                            |
| Receiving Staff _____<br><i>(stamped and initialed)</i> | <b>ASSIGNED TO</b> _____   |
|   | <b>DATE ASSIGNED</b> _____ |

*To be accomplished by the complainant/course/law enforcer (use back portion of additional forms, if necessary)*

**COMPLAINANT INFORMATION** (Impormasyon ng Nagrereklamo)

|  |  |
|--|--|
| <b>Last Name</b> (Apelyido)  | <b>Middle Name</b> (Gitnang pangalan):   |
| <b>First Name</b> (Unang pangalan)   | <b>Alias</b> (Alyas):  |
| <b>Date of Birth</b> (Kapanganakan):   <b>Age</b> (Edad)   | <b>Corporation or Company being represented</b>  |
| <b>Sex</b> (Kasarian)<br>Male (Lalaki)    Female (Babae)   | <b>Citizenship</b> (Pagkamamamayan):<br>If foreigner indicate Passport or ACR No.: _____   |
| <b>Civil Status</b><br><input type="checkbox"/> Married <input type="checkbox"/> Single<br><input type="checkbox"/> Others, Pls. Specify | <b>Occupation</b> (Hanapbuhay)<br><input type="checkbox"/> Private                      Government<br><input type="checkbox"/> Others<br><b>Profession</b> |
| <b>Present Address</b> (Kasalukuyang Tirahan):   | <b>Permanent Address</b> (Permanenteng Tirahan):   |
| <b>Telephone / Mobile Number</b> (Telepono):   | <b>E-mail Address</b>  |
| Other Information  |  |
| <b>Name of Legal Counsel/s</b> (Abogado):  | <b>E-mail Address:</b>   |

**(Cont. Appendix 5: Investigation Data Form)**

**RESPONDENT INFORMATION** (Impormasyon ng Nirereklamo)

|  |   |
|--|---|
| <b>Last Name</b> (Apelyido)  | <b>Middle Name</b> (Gitnang Pangalan):  |
| <b>First Name</b> (Unang pangalan)   | <b>Alias</b> (Alyas):   |
| <b>Date of Birth</b> (Kapanganakan):   <b>Age</b> (Edad)   | <b>Corporation or Company being represented</b>   |
| <b>Sex</b> (Kasarian)<br>Male (Lalaki)    Female (Babae)   | <b>Citizenship</b> (Pagkamamamayan):  |
| <b>Civil Status</b><br><input type="checkbox"/> Married <input type="checkbox"/> Single<br><input type="checkbox"/> Others, Pls. Specify | <b>Occupation</b> (Hanapbuhay)<br><input type="checkbox"/> Private                      Government<br><input type="checkbox"/> Others<br><b>Profession</b> (Propesyon): |

|   |  |
|---|--|
| <b>Offense</b> (Krimen):                            | <b>Counts</b> (Bilang ng krimen):      |
| <b>Date and Time</b> (Petsa at oras ng pangyayari): | <b>Place</b> (Lugar ng pangyayarihan): |

**WITNESSES** (saksi)

|                                     |  |
|-------------------------------------|--|
| <b>Last Name</b> (Apelyido):        | <b>Middle Name</b> (Panggitnang pangalan): |
| <b>First Name</b> (Unang Pangalan): | <b>Address</b> (Tirahan):                  |

**Documents and Evidences Submitted:**

---

1. Has a similar complaint been filed before any other office? \*      Yes  No
2. Is this complaint in the nature of a counter-charge? \*      Yes  No

If yes, indicate details.

3. Is this complaint related to another case filed before this office? \*      Yes  No

If yes, indicate details.

**CERTIFICATION\***

I CERTIFY, under oath, that all information in this sheet are true and correct to the best of my knowledge and belief; that I have not commenced any action or file any claim involving the same issues in any court, tribune judicial agency; and that if I should thereafter learn that a similar action has been filed and/or pending, I shall report to this Honorable Office within five (5) days from knowledge thereof.

\_\_\_\_\_  
*(Signature over printed name)*  
 Complainant  Counsel  Law Enforcer

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
 (Prosecutor Administering Oath)

*\*1,2,3 & Certification need not be accomplished for Inquest cases.*

## Appendix 6: Certificate of Inventory of Seized Items

### CERTIFICATE OF INVENTORY OF SEIZED ITEMS

THIS IS TO CERTIFY that an inventory was conducted in connection with an anti-drug operation with details as follows:

Person/s Arrested: \_\_\_\_\_  
 Type of Operation: \_\_\_\_\_  
 Date/Time of Operation: \_\_\_\_\_  
 Place of Operation: \_\_\_\_\_  
 Operating Unit/s: \_\_\_\_\_

This is to certify further that the following items were seized/confiscated during the operation:

| DRUG EVIDENCE |     |             |         |
|---------------|-----|-------------|---------|
| ITEM NO.      | QTY | DESCRIPTION | REMARKS |
|               |     |             |         |

| NON-DRUG EVIDENCE |     |             |         |
|-------------------|-----|-------------|---------|
| ITEM NO.          | QTY | DESCRIPTION | REMARKS |
|                   |     |             |         |

This certification is issued pursuant to the requirements of Section 21, Article II of Republic Act 9165 as amended by R.A. 10640.

Inventory Officer:

\_\_\_\_\_  
 (Rank/Name/Signature)

Witnesses:

MEDIA REPRESENTATIVE (Name and Signature)

\_\_\_\_\_  
 (Address)

NPS REPRESENTATIVE (Name and Signature)

\_\_\_\_\_  
 (Address)

Elected Official (Name and Signature)

\_\_\_\_\_  
 (Address)

\_\_\_\_\_  
 Arrested Suspect/Representative/Counsel  
 (Name and Signature)



## Appendix 7: Sample Affidavit of Poseur-Buyer

The Affidavit of Poseur-Buyer is executed to identify the person who acted as the undercover for the operation.

### SAMPLE AFFIDAVIT OF POSEUR-BUYER

Republic of the Philippines)  
 Quezon City ) S.S  
 x \_\_\_\_\_ x

### AFFIDAVIT OF POSEUR-BUYER

I, the undersigned, a bonafide member of the Philippine National Police (PNP) presently assigned with \_\_\_\_\_ with office address at \_\_\_\_\_, after having duly sworn to in accordance with law do hereby depose and state;

#### (FACTS OF THE CASE/CHRONOLOGY OF EVENTS)

The chronology of events shall serve to identify the subject and the modus operandi that was utilized.

The actual physical inventory, markings and taking of photographs were conducted at \_\_\_\_\_ and witnessed by the suspect himself in the presence of Brgy. Chairman/Kagawad \_\_\_\_\_ of Brgy \_\_\_\_\_, and Mr/Ms/Atty. \_\_\_\_\_, of City Prosecutor's Office or Mr/Ms. \_\_\_\_\_, of News \_\_\_\_\_;

**(In case of absence of either of the witnesses required, the same must be explained in separate affidavits)**

This paragraph is included in compliance with Section 21 of Republic Act No. 9165, on the requirement of the presence of witnesses.

That the undersigned affixed his initial and signature as markings on the seized drugs using the following markings. That all drug and non-drug evidence recovered were turned-over by the undersigned to the Investigator on case \_\_\_\_\_ at \_\_\_\_\_ of the same date for investigation and documentation.

That we brought the arrested suspect/s to our office for investigation and proper disposition. The arrested person was later brought to \_\_\_\_\_ for medical/physical and drug test while the confiscated pieces of evidence were turned-over by the undersigned to and for investigation and referral to the Philippine National Police crime laboratory at about \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_;

These paragraphs shall serve to establish the chain of custody in handling the drug and non-drug evidence. In marking the evidence, it is recommended that the initials of the seizing officer plus numbers shall be utilized.

**(Cont. Appendix 7: Sample Affidavit of Poseur-Buyer)**

That the arrested person/s was/were later identified as \_\_\_\_\_, \_\_\_\_\_ years of age, and a resident of \_\_\_\_\_;

Laboratory report no. dated \_\_\_\_\_, examined by \_\_\_\_\_ gave the following result:

This paragraph serves to establish the corpus delicti or proof of offense.

That anything not mentioned in this affidavit will be narrated during proper trial;

That I executed this affidavit to attest the truthfulness of the above narrated facts and to support our charge for violation of Sec \_\_\_\_\_ of Art II, RA 9165 against the above named suspect.

\_\_\_\_\_  
Affiant

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_, Philippines

**Appendix 8: Sample Affidavit of Seizing Officer**

The Affidavit of Seizing Officer is executed to properly identify the officer who has personal knowledge of the fact of the seizure of drug and non-drug evidence.

**SAMPLE AFFIDAVIT OF SEIZING OFFICER**

Republic of the Philippines )  
Quezon City ) S.S  
x ----- x

**AFFIDAVIT OF SEIZING OFFICER**

I, \_\_\_\_\_ of legal age, married and bonafide member of the Philippine National Police, presently assigned at \_\_\_\_\_, after been duly sworn to in accordance with law do hereby depose and state:

That I am presently detailed with \_\_\_\_\_, as Investigator;

That on \_\_\_\_\_ at about \_\_\_\_\_, our Unit conducted an implementation of a search warrant operation at \_\_\_\_\_ which resulted to the confiscation of \_\_\_\_\_ and the arrest of the following suspects:

- 1.
- 2.
- 3.

This paragraph shall serve to establish the legality of the operation.

That the undersigned was designated as Seizing Officer on case of the said operation and have caused the preparation of the following documents:

- a.
- b.
- c.

This paragraph shall serve to establish compliance with the required documentary evidence.

That the following pieces of drug and non-drug evidence were seized, with the following respective markings:

| Evidence | Description | Marking |
|----------|-------------|---------|
|----------|-------------|---------|



**(Cont. Appendix 8: Sample Affidavit of Seizing Officer)**

- 1.
- 2.
- 3.

That the pieces of drug related evidence recovered by the Seizing Officer (name of Seizing Officer) were turned over to the Investigator on Case at \_\_\_\_\_ on \_\_\_\_\_ for investigation and documentation.

That on \_\_\_\_\_ at about \_\_\_\_\_, I turned over the drug related evidence to the \_\_\_\_\_ for examination and custody and was received by \_\_\_\_\_

These paragraphs shall serve to establish the chain of custody in handling drug and non-drug evidence.

That, the PDEA/PNP Laboratory Service issued an Chemistry Report No. \_\_\_\_\_ dated \_\_\_\_\_ which gave positive result to the test \_\_\_\_\_

That, the arrested suspects were also turned over by the arresting officers to the undersigned for investigation. The following suspects were brought to PNP Crime Laboratory Group for Medical and Physical Examination.

- 1.
- 2.
- 3.

This paragraph shall serve to establish the identity of the arrested suspect/s.

That I am executing this affidavit to attest to the truthfulness of the foregoing statements and to support the filing of appropriate charges against the suspects.

**IN WITNESS WHEREOF**, I have hereto set my hand and affix my signature

below this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_  
(Affiant)

(INSERT JURAT)

**Appendix 9: Sample Affidavit of Investigator**

The Affidavit of Investigator is executed to properly identify the officer who has personal knowledge of the fact of the investigation.

**SAMPLE AFFIDAVIT OF INVESTIGATOR**

Republic of the Philippines )  
Quezon City ) S.S  
x \_\_\_\_\_ x

**AFFIDAVIT OF INVESTIGATOR**

I, \_\_\_\_\_ of legal age, married and bonafide member of the Philippine National Police, presently assigned at \_\_\_\_\_, after been duly sworn to in accordance with law do hereby depose and state:

This paragraph shall serve to provide basic information on the Investigator on Case.

That I am presently detailed with \_\_\_\_\_, as Investigator;

This paragraph shall serve to establish the authority of the investigate on a certain case.

That on \_\_\_\_\_ at about \_\_\_\_\_, our Unit conducted a \_\_\_\_\_ operation at \_\_\_\_\_ which resulted to the confiscation of \_\_\_\_\_ and the arrest of the following suspects:

- 1.
- 2.
- 3.

This paragraph shall serve to establish the Investigator has personal knowledge of the facts of the case.

That the undersigned was designated as Investigator on case of the said operation and I have prepared and/or caused the preparation of the following documents:

- a.
- b.
- c.

**(Cont. Appendix 9: Sample Affidavit of Investigator)**

That the pieces of drug related evidence recovered by the Seizing Officer (name of Seizing Officer) were turned over to me at \_\_\_\_\_ on \_\_\_\_\_ for investigation and referral for laboratory examination.

This paragraph shall serve to prove that the confiscated or seized pieces of evidence are all accounted for in accordance with Section 27 of Rep. Act No. 9165, as amended.

That on \_\_\_\_\_ at about \_\_\_\_\_, I turned over the drug related evidence to the \_\_\_\_\_ for examination and custody and was received by \_\_\_\_\_.

This paragraph shall serve to establish the chain of custody of handling drug and non-drug evidence, in accordance with Sec. 21 of Rep. Act No. 9165.

That, the PDEA/PNP/NBI Laboratory Service issued a Chemistry Report No. \_\_\_\_\_ dated \_\_\_\_\_ which gave positive result to the test \_\_\_\_\_.

This paragraph shall serve to establish the fact of examination of the drug evidence.

That, the arrested suspects were also turned over by the arresting officers to the undersigned for investigation. Suspects were brought to the PNP/PDEA/NBI Crime Laboratory Group or medical facility for Medical and Physical Examination.

That, after the investigation, the undersigned brought the arrested suspects (Name of the suspect/s) and the non-drug evidence and other pieces of evidence to the prosecutor's office for Inquest or Preliminary Investigation for violation of Section \_\_\_\_\_ of Rep. Act No. 92165, as amended.

That I am executing this affidavit to attest to the truthfulness of the foregoing statements and to support the filing of appropriate charges against the arrested suspects.

**IN WITNESS WHEREOF**, I have hereto set my hand and affix my signature below this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
(Affiant)

(INSERT JURAT)

**Appendix 10: Sample Affidavit of Arresting Officer**

The Affidavit of Arresting Officer is executed to establish the fact of arrest and to prove the validity of the arrest.

**Sample Affidavit of Arresting Officer**

Republic of the Philippines )  
\_\_\_\_\_ ) S.S.

**AFFIDAVIT OF ARRESTING OFFICER**

I, \_\_\_\_\_, a bonafide member the \_\_\_\_\_, presently assigned at \_\_\_\_\_, with office address at \_\_\_\_\_, under oath, state:

**(FACTS)**

1. That on \_\_\_\_\_ at about \_\_\_\_\_ am/pm, a buy-bust operation was conducted by a PDEA/PNP/NBI team where I acted as arresting officer while \_\_\_\_\_ acted as poseur buyer;
2. That the buy-bust operation happened along the corner of \_\_\_\_\_ St., \_\_\_\_\_. The subject of the buy-bust was then known only by his alyas "\_\_\_\_\_".
3. That the poseur buyer approached \_\_\_\_\_ while I and the rest of the team stayed within viewing distance. From my position, I saw the poseur-buyer and \_\_\_\_\_ exchanged marked money and suspected drug. After the said exchange, the poseur-buyer executed the pre-arranged signal letting me and the rest of the team to approach and apprehend the suspect, alyas "\_\_\_\_\_".

This paragraph shall serve to establish the fact that the Arresting Officer has personal knowledge of the commission of the crime.

4. That I introduced myself and the team to \_\_\_\_\_. I effected his arrest, and informed him of the cause of his arrest and his constitutional rights as well. He however opted to remain silent.

This paragraph shall serve to establish the fact that the Arresting Officer was able to inform the arrested person of his Miranda rights, as required by the Philippine Constitution.

5. That physical inventory, markings and taking of photographs were immediately conducted at the scene and witnessed by the suspect himself and in the presence of \_\_\_\_\_ of the NPS/Media and \_\_\_\_\_, an elected public officer, in accordance with Section 21 of RA 9165, as amended.

**(JUSTIFICATION if applicable)**

6. (In case of absence of either of the witnesses required, write here the justification or the genuine and earnest effort to secure their attendance).
7. That the suspect was thereafter brought to our office/station for proper disposition. He undergone medical/physical examination and drug test. The marked money (indicate other non-drug evidence) was turned over to the Evidence Custodian. The confiscated drug evidence was on the other hand turned over to the PDEA/PNP/NBI Laboratory for examination.

(Cont. Appendix 10: Sample Affidavit of Arresting Officer)

This paragraph shall serve to establish the fact that the arrested person was not tortured or physically abused by the Arresting officer and other handling officers, while the arrested person was in their custody.

8. That \_\_\_\_\_ was later identified as \_\_\_\_\_, \_\_\_\_\_ years of age, and a resident of \_\_\_\_\_.

9. That anything not mentioned in this affidavit will be narrated during the trial proper.

10. That I am executing this affidavit to support a charge for violation of RA 9165, Article II, Section \_\_\_\_\_ against \_\_\_\_\_.

**SUBSCRIBED and SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_, Philippines.

Appendix 11: Salient Features of A.M. No. 21-02-01-SC

**SALIENT FEATURES ON THE RULE ON THE DESTRUCTION AND DISPOSAL OF SEIZED DANGEROUS DRUGS, OTHER SUBSTANCES, AND INSTRUMENTS PRIOR TO THE FILING OF AN INFORMATION<sup>196</sup>**

**Rules prior to filing of an information:**

I. Who can file and where to file

A. With Search Warrant

The application for the destruction and disposal of the seized dangerous drugs and related paraphernalia shall be filed by:

|              |   |
|--------------|---|
| <b>WHO</b>   | 1. Law enforcement agent, or<br>2. Prosecutor                                   |
| <b>WHERE</b> | Before the court which issued the search warrant immediately after the seizure. |

B. Without Search Warrant

|              |   |
|--------------|---|
| <b>WHO</b>   | 1. Law enforcement agent, or<br>2. Prosecutor   |
| <b>WHERE</b> | Before the court which has territorial jurisdiction over the case and the place where the dangerous drugs, other substances, and instruments were found and seized. |

<sup>196</sup> This Annex is a summary of A.M. No. 21-02-01-SC, March 16, 2021, <https://sc.judiciary.gov.ph/17815/>, accessed on March 22, 2022.

## II. Mandatory requirements

With or without search warrant, compliance with Sec. 21(1), Article II of R.A. 9165, as amended by R.A. 10640 is required. The following are the mandatory requirements:

- Proper documentation
- Conduct of physical inventory
- Photographs of the seized items

## III. Circumstances when an ocular inspection by a judge is necessary

A Judge shall conduct an ocular inspection of the seized articles within 72 hours from the time the application is filed if:

- The seized drugs amount to 1 kilogram or more, or
- If the seized instruments and equipment cannot be physically brought to court.

## IV. Order for the retention of a representative sample

Within 24 hours from the conduct of the ocular inspection:

- A. The court shall order the retention of a representative sample of the seized drugs which shall be kept in the forensic laboratory of the operating unit which seized the drugs.
- B. In cases where the seized drugs are physically brought to the court, the court shall order the retention of the representative sample of the seized drugs also within 24 hours.
- C. Witnesses required in the taking of the representative samples:
  1. The person from whom the items were seized; or his or her representative; or counsel;
  2. The elected public official who witnessed the physical inventory and photographing of the seized drugs;
  3. An official from the National Prosecution Service or a representative from the media;

4. Law enforcement agent/s who seized the drugs; and
5. Forensic laboratory personnel.

## D. After the taking of representative samples

1. The court shall order the immediate destruction and disposal of the remaining seized drugs or instruments and equipment.
2. Prior to the actual destruction and disposal, the seized drugs shall be immediately sent and delivered to the Drug Forensic Center of the Philippine Drug Enforcement Agency (PDEA).
3. The above cited witnesses to the taking of the representative sample shall also witness the actual destruction of the seized drugs and instruments.

## V. Requirements During Actual Destruction

### A. Witnesses required during actual destruction:

1. The person from whom the items were seized; or his or her representative; or counsel;
2. The elected public official who witnessed the physical inventory and photographing of the seized drugs;
3. An official from the National Prosecution Service (NPS) or a representative from the media;
4. Law enforcement agent/s who seized the drugs; and
5. Forensic laboratory personnel.

### B. Effect of absence of one of the witnesses

The absence of the person from whom the items were seized, or his or her representative or counsel during the actual destruction shall not affect the integrity and identity of the seized dangerous drugs.

## VI. Report

The applicant shall file a report to the court:

### A. Period

Within 24 hours from the actual destruction and disposal of the seized drugs and items

### B. Contents of Report

Photographs and video recordings of the destruction and disposal process.

## VII. Proper and lawful use of seized drugs and controlled chemicals

Upon proper motion, the court, using its sound discretion, may allow the proper and lawful use of seized drugs and controlled chemicals, when no longer needed as evidence, for the training of K9 detector dogs for narcotics subject to compliance of established guidelines by PDEA.

### **Rules after the filing of a criminal information:**

#### I. Consolidation of records in case the criminal information is filed before a court other than the court that issued the search warrant or order for destruction and disposal

If the criminal information is already filed before a court other than the court that issued the search warrant or order for destruction and disposal, the records of the search warrant and order for destruction and disposal, including attachment, shall be consolidated with the court where the criminal information is filed.

#### II. Jurisdiction of criminal case where no search warrant was issued

In cases where no search warrants were issued, the criminal information shall be filed before the court that issued the order for destruction and disposal.



This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the Inter-agency Committee on Anti-Illegal Drugs Justice Cluster and do not necessarily reflect the views of the European Union.