

## **Regulations of the PRC on Arrest and Detention**

(Effective Date: 1979.02.23--Ineffective Date:)

Article 1. These Regulations are formulated in accordance with the provisions of Articles 18 and 47 of the Constitution of the People's Republic of China, in order to safeguard the socialist system, maintain public order, punish crimes, uphold citizens' freedom of the person and protect their homes against any violation.

Article 2. No citizen of the People's Republic of China may be arrested except by decision of a people's court or with the approval of a people's procuratorate.

Article 3. When it is necessary to arrest an offender the principal facts of whose crime have already been clarified and who could be sentenced to a punishment of not less than imprisonment, he shall be immediately arrested by decision of a people's court or with the approval of a people's procuratorate.

If an offender liable to arrest is gravely ill or is a woman who is pregnant or is breast-feeding her own child, an alternative measure may be adopted to allow the offender to obtain a guarantor pending trial or live at home under surveillance.

Article 4. The arrest of an offender, as decided by a people's court or approved by a people's procuratorate, shall be carried out by a public security organ.

When a public security organ demands the arrest of an offender, it shall obtain the approval of a people's procuratorate.

Article 5. When a public security organ arrests an offender, it must hold an arrest warrant and announce the arrest to the person to be arrested. Within 24 hours after the arrest, the public security organ, the people's procuratorate or the people's court shall notify the family of the arrested person of the reason for arrest and the place of custody, except where notification would hinder the investigation or there is no way to notify them.

Article 6. In any of the following emergency circumstances, a public security organ may first detain a major suspect or an active criminal who, on the basis of his crime, should be arrested:

(1) if he is in the process of preparing to commit a crime, is committing a crime or is discovered immediately after committing a crime;

(2) if he is identified as having committed a crime by the victim or by an eyewitness;

(3) if he is found to have criminal evidence on his person or at his residence;

(4) if after committing a crime, he attempts to commit suicide or to escape or is already a fugitive;

(5) if he may possibly destroy or falsify evidence, or collude with others to devise a consistent story;

(6) if his identity is unclear and there is strong suspicion that he is a person who goes from place to place committing crimes; or

(7) if he is engaged in beating, smashing, looting or raiding and is gravely undermining work, production or public order.

Article 7. Any citizen may forthwith seize the following offenders and deliver them to a public security organ, a people's procuratorate or a people's court for handling:

(1) a person who is in the process of committing a crime or is discovered immediately after committing a crime;

(2) a person who is wanted for arrest;

(3) a person who has escaped from prison; or

(4) a person who is being pursued for arrest.

Article 8. In cases where a public security organ considers it necessary to arrest an offender whom it has detained, it shall, within three days of detention, give notice to the people's procuratorate at the same level of the facts and evidence related to the crime of the detained person. Under special circumstances, the time of detention may be extended for four more days. The people's procuratorate shall decide whether or not to approve arrest within three days after receiving the notice. In cases where the people's procuratorate decides not to approve arrest, the public security organ shall, immediately after being notified of the decision, release the detained person and issue him a release certificate.

If the public security organ or the people's procuratorate has not handled a matter in accordance with the provisions of the preceding paragraph, the detained person and his family have the right to demand his release, and the public security organ or the people's procuratorate shall immediately release him.

Article 9. In dealing with offenders who resist arrest or detention, the personnel carrying out the arrest or detention may take proper coercive measures and may use weapons when necessary.

Article 10. In order to look for criminal evidence when arresting or detaining an offender, the public security organ may conduct a search of his person, articles and residence and other relevant places. If it suspects any other person of hiding the offender or concealing criminal evidence, it may also conduct a search of that person, his articles and residence and other relevant places. Except in emergency situations, the public security organ must have a search warrant during a search.

During a search, the person being searched or his family members, as well as his neighbours or other witnesses shall be present. After the search, a record shall be made of the circumstances of the search and of any physical evidence of the crime seized. The record shall be signed by the person searched or his family members, by his neighbours or other witnesses, and by the personnel conducting the search. If the person to be searched or his family members are fugitives or refuse to sign, this shall be noted in the record.

Article 11. When a people's court, a people's procuratorate or a public security organ considers it necessary to seize the mail and telegrams of an arrested or detained offender, they may notify the postal and telecommunications organs to do so.

Article 12. The people's court, the people's procuratorate or the public security organ must conduct interrogation of the arrested or detained offender within 24 hours of his

arrest or detention. If it is discovered that he should not have been arrested or detained, he must immediately be released and issued a release certificate.

Article 13. The people's procuratorate shall investigate and deal with persons responsible for any unlawful arrest, detention or search of a citizen. Where such unlawful action has been taken for the purpose of frame-up, retaliation, taking bribes or other personal aims, criminal responsibility shall be investigated.

Article 14. The provisions of these Regulations are not applicable to detentions executed by the public security organs as administrative sanctions against citizens who have violated the security administration rules.

Article 15. These Regulations shall go into effect on the day of their promulgation. The Regulations on Arrest and Detention of the People's Republic of China promulgated on December 20, 1954 shall be invalidated simultaneously.