

A PRIMER ON THE BASICS OF
MARTIAL LAW

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A PRIMER ON THE BASICS OF MARTIAL LAW

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ALISTO! is an independent civilian monitoring platform on Martial Law in Mindanao. ALISTO!, which is based in Davao and is composed of volunteers, promotes the centrality of transparency, accountability and civilian oversight with respect to Proclamation 216.

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Civilian Monitoring of Martial Law



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1987

WHAT IS THE BASIS FOR THE DECLARATION OF MARTIAL LAW?

The 1987 Constitution grants the President three extraordinary powers which are the following: 1) power to call out the armed forces; 2) suspend the privilege of the *writ of habeas corpus* and; 3) declare Martial Law.



WHAT IS MARTIAL LAW?

Martial law is essentially an exercise of police power that authorizes the military to maintain peace and order over a territory. The Constitution sets down “public safety” as the object of the exercise of Martial Law.



WHO CAN DECLARE MARTIAL LAW?

It is **only** the President who has the power to declare Martial Law. The factual necessity of calling out the armed forces is something that is for the President to decide (IBP vs Zamora, GR. 141284).



WHAT ARE THE GROUNDS FOR THE DECLARATION OF MARTIAL LAW?

Martial law depends on two factual bases: 1) the existence of **actual** invasion or rebellion and; 2) the requirements of public safety.



WHAT ARE ELEMENTS OF REBELLION?

The elements of rebellion are the following: 1) a public uprising; 2) taking arms against the Government and; 3) the purpose of such uprising is either to remove from the allegiance to the Government or its laws, the territory of the Philippines or any part thereof or any body of land, naval, or other armed forces; or to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

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WHAT IS THE PERIOD OF MARTIAL LAW?

Martial Law is limited to a period not exceeding 60 days. This period can be extended by Congress through a majority vote. Martial Law can cover the entire Philippines or any part of the country.



WHAT ARE THE LIMITATIONS IN THE DECLARATION OF MARTIAL LAW?

In the declaration of Martial Law, the following cannot be done: 1) suspend the operation of Constitution; 2) supplant the function of legislative courts or legislative assemblies; 3) confer jurisdiction upon military courts where civil courts are able to function and 4) grant legislative powers to the President.

IN THE IMPLEMENTATION OF MARTIAL LAW,

CIVIL AND POLITICAL RIGHTS ARE **NOT** SUSPENDED.

WRIT OF HABEAS CORPUS

A *writ of habeas corpus* (which literally means to "produce the body") is a court order to a person or agency holding someone in custody (such as a warden) to deliver the imprisoned individual to the court issuing the order and to show a valid reason for that person's detention.

THINGS TO REMEMBER:

- + Suspension of the privilege of *writ of habeas corpus* is **not** automatic upon the declaration of Martial Law.
- + The suspension is only applicable to persons charged with rebellion or offenses inherently or directly connected with invasion.
- + Persons must be charged within three days. If not, they should be released.
- + Pres. Duterte suspended the privilege of *writ of habeas corpus* when he declared Martial Law in Mindanao.

CONGRESSIONAL REVIEW

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The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without the need of a call.



The Congress will vote jointly in deciding whether to revoke or extend the suspension of the privilege or the imposition of Martial Law

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The President has the duty to submit a report within 48 hours, *personally or in writing*, to the Congress from the proclamation of Martial Law or the suspension of the privilege of the *Writ of Habeas Corpus*.

JUDICIAL REVIEW



The Supreme Court may review the sufficiency of the factual basis of the declaration of Martial Law or the suspension of the privilege of the writ or the extension thereof in an appropriate proceeding filed by any citizen.

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The Supreme Court must promulgate its decision *thereon* within thirty days.

ARREST, SEARCH AND SEIZURE

Q: When can there be an arrest?

A: All arrests should be made only on the basis of a valid Warrant of Arrest issued by competent authority *except* in instances where the law allows warrantless arrests.

Q: What are the requisites of a valid warrant?

A: The following are the requisites of a valid warrant:

- 1) It must be issued upon "probable cause";
- 2) Probable cause must be determined personally by the judge;
- 3) Such judge must examine under oath or affirmation the complainant and the witnesses he may produce; and
- 4) The warrant must particularly describe the place to be searched and the persons or things to be seized

Q: What is the meaning of "probable cause" in the issuance of warrant of arrest?

A: Facts and circumstances that would engender a well-grounded belief that a crime has been committed and the person to be arrested committed it.

Q: Who can issue warrant of arrest?

A: It is **only** the judge who can issue warrant of arrest.

Q: How should arrest be made?

A: No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subjected to any greater restraint than is necessary for his detention.

Q: What are your rights when arrested?

A: The person arrested, with or without warrant, shall be informed of his constitutional rights to remain silent and that any statement he makes could be used against him. Also, he has the right to communicate with his lawyer or his immediate family.

You also have the right not to be subjected to torture, manhandling, intimidation, deceit, promises of reward or leniency of any means (drugs, hypnosis, etc.) that vitiate or weaken your free will.

Q: When can there be a warrantless arrest?

A: Warrantless arrests shall be effected under any of the following circumstances, among others:

1. When the person to be arrested has committed, is actually committing, or is attempting to commit an offense in the presence of the arresting officer;
2. When an offense has just been committed and the arresting officer has personal knowledge of the facts indicating that the person to be arrested has committed the offense;
3. When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another;
4. When the person arrested, or to be arrested, has voluntarily waived his rights against warrantless arrests.

Q: When can a search be made at a residence or office?

A: A house or office **cannot** be searched without a warrant duly issued by a Judge.

When a valid search warrant is issued, the searching party can only seize things that are particularly described in the search warrant, unless consent is given or the articles are in plain view. If a person is arrested, that person's immediate surroundings may be searched for dangerous weapons and evidence of the offense.

Q: When should a search warrant be served?

A: A search warrant must be served during the **daytime** *unless* the affidavit supporting it asserts that the property is on the person or in the place ordered to be searched, in which case the warrant must specifically direct that it can be served at any time of the day or night.

Q: Who should be present at the time of search?

A: No search of a house, room or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, in the presence of two (2) witnesses of sufficient age and discretion residing in the same locality



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