

The Impact on Enforcing Act and 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System

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Abstract

The purpose of this research is to study the impact on Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the inquiry official, prosecutor, court and attorney under the justice agencies when enforcing such law. The study also examines the impact on rights protection for injured persons and offenders and the effectiveness of government enforcing laws as well as learning about problems and obstacles discovered during the process. The research was conducted through qualitative data. This required Focus group discussions twice with the inquiry officials and prosecutors and conducted in-depth interviews with the Inquiry Official Executive, Attorney General, Judge, Attorney, Injured Person and Offenders, selected 5 samples for each group. Moreover, data were gathered from literature. Research results showed that the impact from enforcing laws happened when the inquiry official must complete the deposition within the postpone prosecution period, considering as the legal right protection for the offender. When offender had been informed of all charges, the inquiry officials must deliver the deposition to the prosecutor to file such lawsuit within 48 hours or within the court permission. However, the inquiry officials was unable to complete the deposition on time. As a result, there was a huge backlog of unfinished depositions that required approval from the Attorney General. Regarding the effectiveness of law enforcement, this law had been applied with the small and uncomplicated cases and the offenders usually confessed to the crime. Problems and obstacles occurred when the inquiry officials submitted the petition to postpone prosecuting the offender who confessed to the crime, the court would accept such petition and the offender would be released without bail. If the inquiry official was unable to bring the offender to the court within the postpone time, he must seek permission from the Attorney General for prosecuting case. It is rather difficult to track down the offender to deliver on time to the prosecutor.

Keywords: Enforcing Act, Criminal Procedures, Thai Summary Court Act Thai Summary Court Act, Rights Protection

Background and the significance of the problem

Thailand criminal justice deploys numerous state authorities in law enforcement, which are the inquiry officers, the prosecutors, and the court in charge of bringing the perpetrator to justice, having the police force with the inquiry officers which has been assigned to handle the crime as well as gather the witness and evidence to prepare deposition for presenting to the prosecutor and he must conduct the investigation on the deposition to ensure the completion of the evidence. If the evidence is insufficient, the prosecutor could order additional inquiries and consider filing the lawsuit in court when the evidence is fully available. The court would consider whether or not the evidence is sufficient enough to reprimand the perpetrator in which the court requires seeking of the witness until the court has no doubt that the defendant is actually commit wrongdoing before passing the sentences.

In the judicial process, the attorney would assist the perpetrator on legal issues during the inquiry session and court sentencing. (Pollawan, 2013: 5-7)

In the criminal judicial process, the inquiry officers would review the case if it is under the jurisdiction of which court so the inquiry could be done within appropriate court jurisdiction. Examples are as follows: (Mekmanee, 1979: 34-37)

1. A case where the perpetrator is under 18, prosecuting such person must be committed within the boundary of Central Juvenile and Family Court.
2. A case where the perpetrator is under 18, the inquiry officer must consider the gravity of the offence to determine the penalty rate and inform the perpetrator of charges.
 - 1) If the perpetrator received imprisonment term 3 years or under or maximum fine 60,000 Baht, or both. Such case would be under the Summary Court consideration.
 - 2) If the perpetrator received imprisonment term exceeding 3 years or over 60,000 Baht fine, or both. Such case would be under the Provincial Court consideration.

Further from the prosecutor case No. 2, the inquiry officer must use own judgment to review decision to find out if such case could be presented in specific such as The Central Intellectual Property. The inquiry officer in charge must be knowledgeable and understand different process in each court. (Mekmanee, 1979: 39-40)

Prosecution case under the Summary Court is the trial against the perpetrator 18 and over who received the imprisonment term not exceeding 3 years or maximum fine 60,000 Baht. The inquiry officer must proceed with the interrogation in accordance with the Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System, as intended for the minor case in the Summary Court to proceed quickly, consistently and fairly. Prior to the advent of Enforcing Act and the 2013 Criminal Procedures, the prosecution of case under the Summary Court by the inquiry officer. (Pollawan, 2013: 10-11)

Since the Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act that had been announced in the government gazette on March 29, 2013 and went in effect 90 days after the announcement date, exactly on July 28, 2013, onwards, that the prosecution principles have been changed in the following key aspects:

In the case where the perpetrator made voluntary appearance to the inquiry officers and at that time no arrest warrant had been issued. The inquiry officers would deliver the deposition accompanied the perpetrator to the prosecutor for filing the case with the Summary Court within 48 hours.

In the case where the perpetrator made voluntary appearance to the inquiry officer, if the inquiry officer was unable to deliver the deposition within 48 hours, The inquiry officers or the prosecutor, depended on the case, should file delay for filling and put the perpetrator in jail 5 times and 6 days each time.

In the case where the perpetrator made voluntary appearance to the inquiry officer, if the inquiry officer must deliver the deposition within the court timeline allow, if he could not make it on time, the prosecutor must present the deposition to the Attorney General seeking approval for filing otherwise the court would dismiss the case if the prosecutors filed the case without authorization from the Attorney General.

All depositions whether or not the perpetrator is caught or voluntarily appeared before the inquiry officers and he already informed the perpetrator of the charges, including the inquiry officer could not deliver the deposition to the prosecutor on time seeking approval for filing within the court timeline allow, and used up all 5 times or is unable to use the same deposition with the prosecutor who had been escaped during provisional release. In this case, the inquiry officer could deliver the deposition to the prosecutor without bringing in the escaped accused for the perpetrator to consider if there is ample evidence to convict the

prosecutor or order additional interrogation, including asking the Attorney General to the case beforehand.

With changes occurred in the prosecution procedures of the inquiry officer as being seen in the Enforcing Act and the 2013 Criminal Procedures in the Summary Court that demonstrated rapidly increasing number of deposition presenting to the prosecutor seeking approval from the Attorney General as shown on Table 1: (Department of the Attorney General's Litigation Affairs, 2015: 1-2)

Table 1 Cases seeking approval from Attorney General

Year	No. Cases seeking approval for filing Lawsuit
2011	721 cases
2012	574 cases
2013	2789 cases
2014	4459 cases
2015	3376 cases

Table 1 suggests the number of depositions sending from the inquiry officers all over the country to the Attorney General seeking approval for filing the case after the passing of the Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act increased rapidly (Department of the Attorney General's Litigation Affairs, 2015: 2-6). The statistical record from 2011-2012 displays the number of depositions seeking approval to file the case from the Attorney General less than 1,000 cases. Nonetheless, in 2013, even with the law had been passed, effective July 28, 2013 onwards, the number of deposition presented to the Attorney seeking approval for filing the case increased to 2,789 cases in 2014 with the tendency to keep rising in 2015 as a result from changes in prosecuting case under the Summary Court. The researcher is interested in studying the impact on Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System, and to the inquiry officer, prosecutor, court, and attorney performance, including the impact on the perpetrator and the victim related to the deposition.

Literature Review

Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System

Principles and Reasons for Amendment: The principles for additional amendment No. 5 based on the Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act to the Criminal Justice System, effective dated June 28th 2013, specified that the case where is no arrest, but the inquiry officer had informed the perpetrator of the charge, the inquiry officer then could see the prosecutor so the perpetrator could file the lawsuit. In case where the perpetrator has not been detained and the inquiry officer ordered the perpetrator to appear in court for warrant of detention or the prosecutor file the petition to delay filing, including the request for the court to issue the detention warrant. Then, seeking approval to file the lawsuit after the expiration based on Article 7, method and specified conditions of the General Attorney. In the case when the perpetrator who had not been detained to all charges, the inquiry officer must order the perpetrator to meet the prosecutor so to file the charges in court without the inquiry as well as assigning the President of Supreme Court, Prime Minister and Minister of Interior and Attorney General to take charge based on the Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act to the Criminal Justice System.

The reason for declaring the use of this Act the amendment of criminal procedures to be in line with the principles of the said laws as well as the current court of justice, the independent

agency as if being the Juristic Persons under the command of the President of Supreme Court, Royal Thai Police. It is the division under the command of Prime Minister, and the Constitution of Kingdom of Thailand that established officer of Attorney General as other independent agency based on the Constitution. It is then appropriate for the President of Supreme Court, Prime Minister and Attorney General to take charge in the operation related to own authority and it is necessary to enact this Act.

The performance of Inquiry Officer and Prosecutor in accordance with Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act to the Criminal Justice System.

The amendment of such Act altered the prosecutor procedures of cases under the Summary Court for the inquiry officer and prosecutor in the following aspects:

When the perpetrator came in to meet the inquiry officer and admit his guilt, but during that time none the arrest warrant was issued, When the inquiry officer had explained the charges and informed the perpetrator, the inquiry officer must deliver the perpetrator to the Attorney General for him to file the charges on court with the specified time 48 hours, from the time of informing the perpetrator about the charges. (Pollawan, 2013: 35-37)

If the inquiry officer was unable to deliver the perpetrator to the prosecutor or the prosecutor was unable to file the charges on court within 48 hours, the inquiry officer or the prosecutor depended on the case must submit the petition to the court for delay filing and detaining by empowering him to accompany the perpetrator to court to submit the petition for delay filing as well as requesting the court to issue detention warrant within the required time 48 hours which could delay filing 5 time, provided that each time the delay must not exceed 6 days.

If the prosecutor was unable to file the charge on time, within 48 hours and failed to ask for the delay or submit the petition for delay filing and unable to file the charge within the specified time by the court, the prosecutor must deliver the deposition to the Attorney General, seeking his approval before filing the charge. If the prosecutor went ahead and filing the charges without approval from the Attorney General. Then it was considered as the inappropriate filing and the court would consider terminating the case.

The deposition containing the perpetrator statement had been included as part of the deposition and if the perpetrator escaped regardless of the perpetrator status, apprehended or released temporary by the inquiry officer with bail or the perpetrator came in to meet the inquiry officer as schedule or the case where the perpetrator came in to meet the inquiry officer and he had informed the perpetrator, but the perpetrator failed to meet the inquiry officer. Once the deposition had completed, the inquiry officer must deliver the deposition to the prosecutor so he could seek approval from the Attorney General ahead of time. If this the case, there is no need for the inquiry officer to deliver the perpetrator at the same time. (Pollawan, 2013: 39-42)

Seeking approval from the Attorney General to the file the charges was conducted after receiving the inquiry deposition together with the perpetrator, the prosecutor was then seeking approval from the Attorney General to file the charges. This provision designs to proceed with the case as soon as possible. (Kusolsilpvutthi, 2010: 60-62). The amendment of provision on seeking approval for filing charges must consider the legal intention and the reason for the prosecutor to approve the filing because the imprisonment in the Summary Court is 3 years or under and 60,000 Baht fine or less. Judging from the imprisoned from and fines, they are not that high. Therefore, the Enforcing Act and the 2014 criminal procedures designed the pattern to prosecute the case quickly to protect the right of individual who had been the perpetrator, not to be detained for longer than usual. In this case, the detention duration or imprisonment by the court order is quite different from the detention in the criminal and provincial court, namely, the case must be file in court within 48 hours. If the filing could not be done on time, the inquiry officer must ask for the delay up to 5 times, and

each time only 6 days, for the total of 30 days. As being seen, the provisions allow the delayed process separated from the detention and imprisonment in which the prosecutor must deliver the perpetrator within the time limit and is should not take too long, If the time had passed, he must seek the approval from the Attorney General for filing the charges. Since the case only imposed moderate punishment, the Attorney General could consider if it is reasonable to approve the filing of charges (Kositsurangkagul, 2010: 33-35). For example, the case with 1 year limitation or under, the inquiry officer could delay the case and failed to deliver the perpetrator to the prosecutor or the delayed expired nearly a year or over a year until the statute of limitation had run out. So the Attorney General approval only on the case where the perpetrator found based on the criminal procedure code, Article 142. Therefore, it is being seen that the permission to file the charges could not apply in this case, otherwise, it is as the Attorney General approved the filing of charges without the perpetrator presence. Then, it is contradicted to the intention of the criminal case prosecutor in the Summary Court that required the perpetrator to receive fast case consideration and the Attorney General to approve filing charges so the perpetrator could avoid prosecutor in the inquiry level as well as preventing the prosecutor to take unnecessary delay that could affect individual rights of freedom. (Polllawan, 2013: 44-45)

Relevant Criminology Theories

Due Process of Law: The practice according to the Enforcing Act and the 2013 Criminal procedures in the Summary Court Act to the Criminal Justice System in with the Summary Court could proceed with the cases under its Jurisdiction, namely, the case with imprisonment for 3 years and under or pay 60,000 Baht fines or under or both in which the court proceeding must be done according to the legal procedure and the law had the provisions to support the right and freedom of the people (Nateerataiwa, 2012: 27-28). The operational processes must be verified by the court, not to empower only one authority. This theory based on the concept of individual crime just because of the surrounding circumstantial evidence. An accused suspect would be proven a guilty party only if the legal authority decided that he was actually the wrongdoer, and such authority must be neutral, without bias or discrimination as well as being reliable institution. Therefore, all evidence collected by the police inappropriately or in violation of legal provisions would not be admissible in court as the evidence on wrongdoings, otherwise it would be considered as applying Fruit of Poison Theory in the court case sentencing which should focus mainly on the protection of rights and freedom of the people based on the principle “releasing ten wrongdoers is much better than punishing one innocent person”. (Boonsuwan, 2004: 45-48) Furthermore, the evidence collected through appropriate approach, but from the inappropriate witness or data, the law prohibited the court to listen or incorporate such evidence in sentencing the perpetrator, based on the Fruit of the Poisoned tree Doctrine (Kusolsilpvutthi, 2010: 47-48) as to prevent the police officers from the attempt to break the law.

This justice theory is intended to control the police operation in line with the fundamental judiciary procedures that could be referred as the evidence without consideration if such evidence is accurate or reliable (Kusolsilpvutthi, 2010: 49), which considered strict court rules that imposed on the police performance so they could function properly. For example, the search and seizure must be done according to the unreasonable search and seizure rules. Therefore, the police officer when searching and confiscating any property in the seclusion places required the search warrant from the court otherwise the acquired evidence from the search would not be admissible in court because it could damage the entire justice system (Kusolsilpvutthi, 2010: 51). Even though the principle of thus search has the exceptional cause such as, the individual agreed to the search and seizure or the emergency situation that the evidence may have been destroyed before obtaining the search warrant or decision must be made abruptly in order to save life or prevent the perpetrator escaping or the case where

the perpetrator with weapon went inside the other people house to hide, the police should then have the right to follow and arrest the suspect without search warrant (Kusolsilpvutthi, 2010: 53). Furthermore, the police officer should seize the item found in the crime scene that may be the officer's fault or in the case where the perpetrator could arrest the perpetrator, or the police serve arrest warrant to the wrong house, but the police plainly misunderstood that they had conduct the search on the correct address, This was the case where the police officers misjudge their own authorities, so the evidence derived from that search was inadmissible. (Kusolsilpvutthi, 2010: 55-56)

Crime Control Theory: Crime Control Theory has been influenced by the Classical Criminology from the belief that man could control own action since he is reasonable creature who enables one to find or make a reason for everything he has a mind to do as well as aim to pursue the happiness (Kuntee, 2010: 25-27). For this reason, there must be the contract between the people and the state so they could prevent chaos in the society. However, Individual has freedom to make own decision and believe that he would not be arrested for committing crime, but if he happened to get caught, the punishment may not be harsh.

Therefore, the effective justice system to prevent crime must be done swiftly, persistently and harshly as being focused mainly on finding the perpetrator and bringing him to receive his sentences as the warning to others not to violate the laws. Moreover, punishment is to warn other not to commit crime from fear of being punished. (Kuntee, 2010: 29-30)

Such judicial process based on the crime defensive theory had increased severe penalty for the violators, which proportionately added penalty comparable with the nature of crime, making the general public afraid of wrongdoings, as well as empowered the police as the initial due process to collect the evidence in order to bring the perpetrator to justice quicker, making the law more sacred in which the authorization such as issue search warrant, and arrest warrant could be done with the administration or police. Therefore, such empowerment allowed the police to perform officer performance may affect individual freedom.

Research Objectives

1. To study impact of the Enforcing Act and the 2013 Criminal Procedures in the Summary Court towards the inquiry officer, prosecutor, court, and attorney.
2. To explore the impact towards the rights protection of the accused, victim and, measure the effectiveness of Enforcing Act and the 2013 Criminal Procedures in the Summary Court.
3. To learn problems and setbacks while performing duties in accordance to the Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act.

Scope of Research

Scope of Content: he research aims to study involved the In depth Interview and Focus group among the law enforcers in accordance with the Enforcing Act and the 2013 Criminal Procedures in the Summary Court, namely, the inquiry, the prosecutor, the judge, the attorney, the victim and the perpetrator. The research gathered data from the texts, research reports, electronic documents and other relevant documents.

Scope of population under the study: Sample in this study are experienced scholars directly in charge of prosecuting cases under the tor Summary Court, comprise of the following individuals: the Inquiry Officer, Royal Thai Police, the Prosecutor, Officer of the Attorney General, the Judge, Court of Justice, the Attorney, Lawyers Council of Thailand under the Royal Patronage, the Victim, and the Perpetrator.

Areas of the Study: The study of Enforcing Act and the 2013 criminal procedures in the Summary Court Act to the Criminal Justice System was conducted in Bangkok and perimeter due to the samples working in the Center of Provincial Administration.

Research Methods

This research is a qualitative research, aiming to study the impact on enforcing act and 2013 criminal procedures in the summary court act, where the research methodology is consisted of;

The used sample in this research are 50 people in total, chosen by purposing sampling, including the inquiry officer, prosecutor, judge, director of Royal Thai Police and director of Office of the Attorney General.

The researcher used two collecting data methods, including; (1) firstly, focus group where the first seminar was conducted on April 3, 2014, and the second seminar was conducted on April 4, 2014 at Asia Airport Hotel, by inviting the officers those who are in charge of prosecuting cases under 2013 Criminal Procedures in the Summary Court Act and opening the discussion which provided them an opportunity to share and discuss their experiences relating their change; (2) secondly, in depth interview from the specialists those who are experienced scholars directly in charge of prosecuting cases under the Summary Court's jurisdiction, by using a questionnaire as collecting data method. This collecting data had been occurred between April 2014 and May 2015 where the researcher was a part of the interview as an interviewer, as well as sending the letter to the participants asking for directly sending the questionnaire to them and also made an appointment by a phone call for the in depth interview in person.

For the qualitative data analyzing, the analysis was focused on content which is from seminar discussion and in depth interview.

Research Results

The purpose of this research is to study the impact on enforcing Act and Criminal Procedures in the Summary Court to the inquiry officer, prosecutor, judge and lawyer, as well as to study the impact on rights of victims and perpetrators and also the effectiveness of enforcing Act and the 2013 Criminal Procedures in the Summary Court, in order to identify the obstacle in complying with the law. In this regard, the researcher conducted this qualitative research and found these following results.

The Impact on Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System to the Inquiry Officer, Prosecutor, Judge and Attorney

The impact towards the inquiry officer is when the inquiry officer must hurriedly complete the deposition within the specified delay filing of case, in which the inquiry officer could conduct the inquiry only within the law limitation, and the petty case without complication and the perpetrator confessed to the wrongdoing. As for the complicated case or a case with numerous evidence that the inquiry officer could not complete the interrogation within the time the court allows the delay. In this case, the deposition must receive approval for filing the case from the Attorney General, whereas the inquiry officer action would be considered as the disciplinary flaw accompanied the deposition. When the prosecutor notified the inquiry officer to contact the perpetrator to file the court case and the prosecutor may have to pay out of his pocket to find the perpetrator to bring him to justice.

The impact towards the prosecutor is the delay filing deposition of the perpetrator who came in to meet the inquiry officer to receive the charge and had been released without detention. If the perpetrator failed to show up on appointment and the delay expired, the perpetrator must

submit the deposition to the Attorney General seeking approval for filing the case, making the depositions accumulated even more, as well as delay seeking approval for filing, allowing many depositions remain the prosecutor burden. For any uncomplicated cases and the perpetrator confessed to wrongdoing, but the deposition for petty theft without complication could be filed within 48 hours. At the any rate, the deposition of different perpetrators, or a crime that caused many damages at one time. If the inquiry officer has no experience in preparing deposition, and the flaw is found in the deposition delivering to the prosecutor, in this case, the prosecutor would order additional inquiry, which could cause the delay in the process.

AS for the judge and attorney, there had been no impacts found since Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System is the inquiry officer and prosecutor directly prosecuting the case against the perpetrator.

Impact on Rights of Victims and Perpetrators and effectiveness of Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System

Impact on Rights of Victims: None of the victims' rights had been impacted because the victims' rights as stated in the Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System were not changed beyond original announcement. Besides, the right of the victims to receive compensation before the judge sentences had been neglected.

Impact on Rights of Perpetrator: The impact on perpetrator' rights presented both advantages and disadvantages. The advantage is when the perpetrator has been informed of all changes, the inquiry officer must send the deposition to the prosecutor for filing charges against the perpetrator within 48 hours, otherwise he must submit the filing within the court approved time, which is considered the inquiry acting in a rush to complete the case, but the inquiry officer would know about the time frame or when the case is closed. The disadvantage is when the perpetrator came to meet the inquiry officer and during that time, none of the arrest warrant had been issued, but the inquiry officer informed him about the charges. If is the responsibility of the inquiry officer to accompany the perpetrator to file the charge within 48 hours, if not, the inquiry officer has the authority to detain such person to submit the petition to delay filing the charge and the arrest warrant from the court to imprison the perpetrator during the delay of filing so the perpetrator must put up the bail for temporary release in the court which may impact the right of the perpetrator indirectly.

As for overall effectiveness of Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System. The advantage is the case under the Summary Court that required the inquiry officer to file the charges in court against the perpetrator within 48 hours, starting from the time filing the charges, with or without apprehension of the perpetrator or the perpetrator willingly turned himself in and already been informed of the charges somehow created the psychological impact to ensure the public that the criminal judicial process has actively pursued the case and such action is to prove to the public that justice has been served, no matter who you are. If that person committed a crime, he must be prosecuted and sentenced by the court immediately, which only impacted minor case and a case that the perpetrator had pledges his guilt. For the complicated crime case or required excessive evidence, law enforcement had been moved slowly and inconsistent, not exactly agreed to the intention of the law.

Problems and Setbacks in performing duties in accordance with the Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System

Prosecution of cases under the Summary Court jurisdiction that were unable to file charges within 48 hours as intended by the Laws, depending on how the evidence was collected, how

the inquiry officer prepare the deposition. Before the court prepared the sentence; both sides, the victim and the perpetrator had no chance to negotiate settlement which may be the case in compromise agreement case, and the case outcome may change the case nature. Even in some case, the accused may not be the real perpetrator, but the pledged guilty to the crime just to get over with.

The deposition in the case where the accused pledged guilty to crime could not be filing to the court within 48 hours because such case may need other evidence such as, automobile accident or bodily harm that required confirmation of changes in the wound. Therefore, problems occurred when submitting petition for the delay and the perpetrator was released without bail because he pledged guilty to the court, so the court cancelled the petition.

As for the seizure of alleged offender in other prison custody, after the inquiry officer informing such alleged offender of the charge and he is unable to delay the filing as well as bringing the alleged offender in other prison custody to court that has the authority to consider the case. It has become the operational problem for inquiry officer and prosecutor.

Discussion

Table 2 suggests that the criminal proceeding in the Summary court prior to the implementation of Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act to the Criminal Justice System is much more convenient than the current law due to the rush on collection of evidence on the inquiry officer.

Table 2 Comparison of Cases under the Summary Court prior to the Implementation of Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act to the Criminal Justice System and the Current Law

Bullet Point	Old Law	New Law (Current)
1. Perpetrator turned himself in to the inquiry officer during the time none of the arrest had been made, such case must be submitted to the court within 48 hours from the time the perpetrator had been informed about the charge	1. Not consider as an arrest 2. Not authorized to control 48 hours 3. No temporary released during the inquiry officer interview 4. Interview the suspect and release without bail 5. No need to file the case within 48 hours starting from the time filing charges	1. Not consider as an arrest 2. Not authorized to control 48 hours 3. No temporary released during the inquiry officer interview 4. Interview the suspect and filing the case 48 hours from the time informing the charges.
2. When the perpetrator who turned himself in had been informed about the charge, if the deposition could not be done within 48 hours, it could be delayed 5 times, each time not exceeding 6 days.	1. No need for submitting the delay	1. The delayed filing charges must be done within 48 hours from the time informing the charges. 2. Having authorized to detain the perpetrator to court to request arrest warrant during the delayed filing.

Table 2 (Con.)

Bullet Point	Old Law	New Law (Current)
3. If the inquiry officer could not file the charge within the court allowed time for the delay.	<p>1. When the perpetrator turns himself in and the inquiry officers informed about the charge, the prosecutor could file the charges within the time period.</p> <p>2. The deposition with the arrested perpetrator and the inquiry officer could not file the criminal charge on time of the delayed filing, the deposition must be presented to Attorney General to seek his approval for filing charges.</p>	1. The inquiry officer must present the inquiry deposition to the Attorney General to seek his approval for filing the charges in every case.
4. Delivered the inquiry deposition of the escaped perpetrator	1. The inquiry officer must deliver the inquiry deposition along with the perpetrator, except the perpetrator is in the custody or imprison.	1. The inquiry officer must deliver the inquiry deposition even without the perpetrator presence.

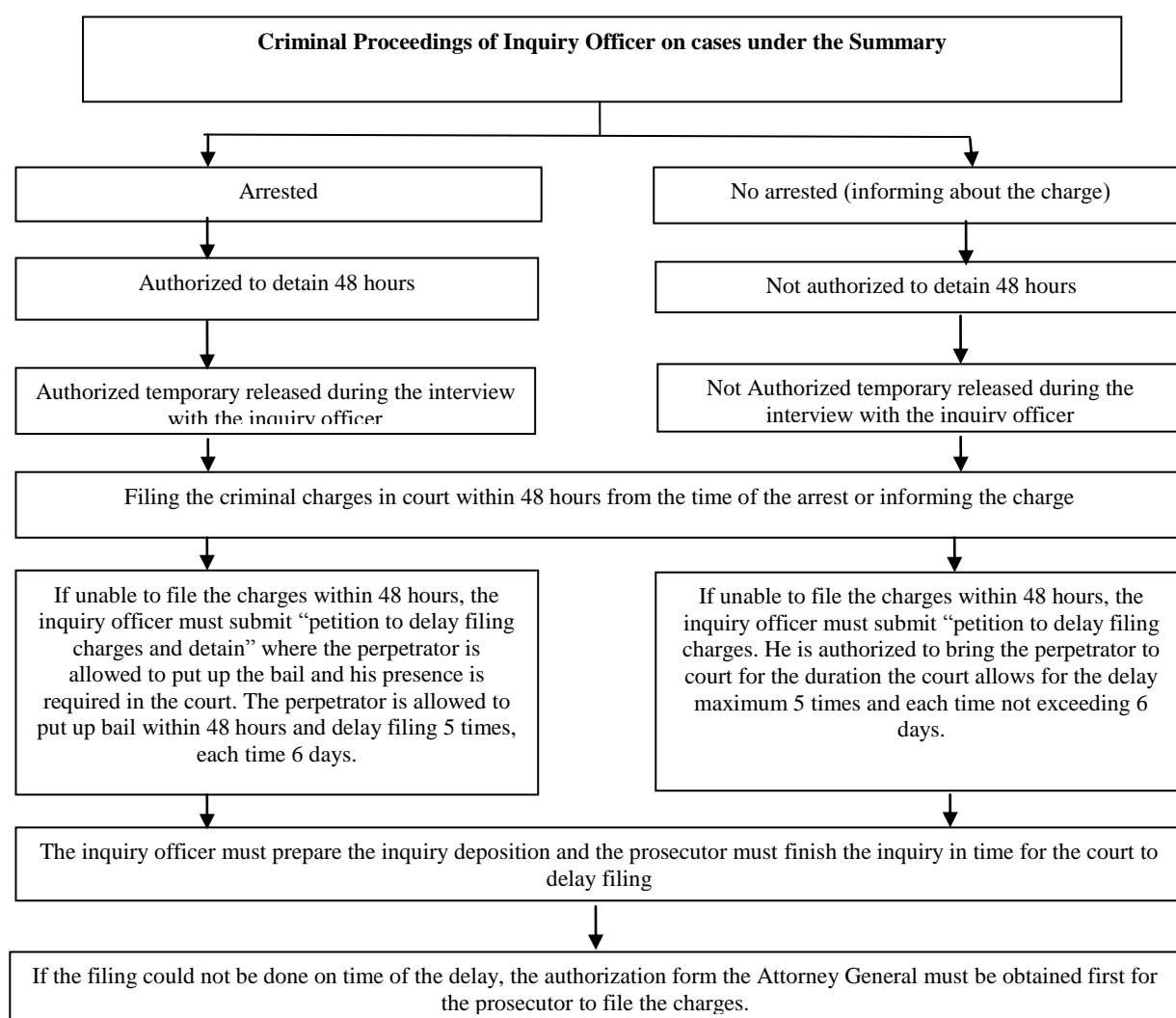
**Figure 1** Current Criminal Proceedings of Inquiry Officer on cases under the Summary

Figure 1 suggests that the criminal proceedings under the Summary Court whether or not the perpetrator had been apprehended or the inquiry officer turned himself in and the inquiry officer informed him about his charges, the inquiry officer must submit the filing within 48 hours in all cases and if the filing could not be done on time, he must submit the petition to delay the filing to the Summary Court within 48 hours, and the delay filing is allowed maximum 5 times, not exceeding 6 days. In case the filing missed the court allowed time, the inquiry deposition must be sent to the Attorney General to seek his approval for filing the charges, then the prosecutor file the charge against such case. The amendment of the law caused the operation differed from the past and affected the relevant performance as being seen in the interview with the samples who had knowledge and experience on the criminal proceeding in the Summary Court. The content is being discussed as follows:

Impact on Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System on the Inquiry Officer, Prosecutor, Judge and Lawyer

Impact on Inquiry Officer: The amendment of the existing laws as earlier mentioned also created impact on the officer gathering evidence and inquiry officer in the following issues:

When the perpetrator turned himself to the inquiry officer when the arrest warrant had been issued, but the inquiry officer already informed him about the charges, the inquiry officer could file the charge against him to the Summary Court within 48 hours from the time informing charges on perpetrator. Nonetheless, the impact on Inquiry Officer is when the inquiry officer could not bring the perpetrator to the prosecutor for filing the charge on time every case because the inquiry officer must gather enough evidence before he could proof the perpetrator's guilt and file the charges. Then, the inquiry officer could inform the perpetrator about the charges and take fingerprint but he was unable to check on the perpetrator's background on time, although the deposition was sent to the prosecutor within 48 hours and the perpetrator already pledged to the guilt. In this case, the prosecutor could not file the charge against the perpetrator in the Summary Court because the prosecutor must double check the perpetrator's background to verify whether the perpetrator had committed the crime anywhere else, otherwise he must add more the perpetrator must increase the penalty. Therefore, most of times during that stage, the prosecutor must release the perpetrator when he turned himself and the warrant arrest had not been issued, the inquiry officer was then unable to release most of the perpetrator. Uniformly, New South Wales Law Enforcement (Powers and Responsibilities) Act 2002 - Section 99 Power of police officers to arrest without warrant,

1. A police officer may, without a warrant, arrest a person if:

1) the police officer suspects on reasonable grounds that the person is committing or has committed an offence, and

2) the police officer is satisfied that the arrest is reasonably necessary for any one or more of the following reasons:

2.1) to stop the person committing or repeating the offence or committing another offence,

2.2) to stop the person fleeing from a police officer or from the location of the offence,

2.3) to enable inquiries to be made to establish the person's identity if it cannot be readily established or if the police officer suspects on reasonable grounds that identity information provided is false,

2.4) to ensure that the person appears before a court in relation to the offence,

2.5) to obtain property in the possession of the person that is connected with the offence,

2.6) to preserve evidence of the offence or prevent the fabrication of evidence,

2.7) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence,

2.8) to protect the safety or welfare of any person (including the person arrested),

2.9) because of the nature and seriousness of the offence.

2. A police officer may also arrest a person without a warrant if directed to do so by another police officer. The other police officer is not to give such a direction unless the other officer may lawfully arrest the person without a warrant.

3. A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before an authorised officer to be dealt with according to law.

4. A person who has been lawfully arrested under this section may be detained by any police officer under Part 9 for the purpose of investigating whether the person committed the offence for which the person has been arrested and for any other purpose authorised by that Part.

5. This section does not authorise a person to be arrested for an offence for which the person has already been tried.

6. For the purposes of this section, property is connected with an offence if it is connected with the offence within the meaning of Part 5.

When the perpetrator was informed about the charge during his turning himself in and none of the arrest had been issued, the investigation officer must file the charge within 48 hours, if the filing could not be done on time, he could petition for delaying the case 5 times and each time the court allowed only 6 days or less. The inquiry officer has authority to detain him and deliver ton the court for issuing the arrest warrant. This has affected the performance of the inquiry officer when some officer was unaware of the amended law allowing him to accompany the perpetrator to petition for delay filing at the court as well as request the court to issue warrant for detention warrant. Therefore, the amended law that authorized the inquiry officer to accompany the perpetrator to request delay for filing charges and issuing the detention of warrant during the delay had affected the performance of the inquiry officer, quite different from pervious practice. The amended new laws obstructed the inquiry officer from delivering the deposition to the prosecutor for court filing within the court specified time due to the complex nature of deposition in each case by requiring the inquiry officer to state the reason why he was unable to deliver the deposition on time specified by the court, which subjected the inquiry office to the inquisition and disciplinary action. As a consequence, more and more petition for delay filing charged had been piled up, especially the deposition on the case where the perpetrator turned himself in and the inquiry officer had already informed him about the charges, as well as releasing the perpetrator with the appointment date to come in later. If the perpetrator failed to show up on the appointment date because he would be subjected to the filing charges in court. Then, the perpetrator must put up the bail in court to have himself released temporarily. This is why the number of deposition in such case had increased tremendously.

Impact on Prosecutor: The amendment of the law has created the impact on the prosecutor's performance under the division of Justice System that extended from the inquiry officer, having the prosecutor to accept the inquiry deposition from the inquiry officer directly to consider if such deposition has ample evidence to order filing criminal charges against the prosecutor.

The perpetrator turned himself in to receive the charges and during that time none of the arrest warrant had been issued, the inquiry officer must file the criminal charge against the perpetrator within 48 hours, otherwise he must submit the petition for delay filing within 48 hours, and such incident hardly caused any impact on the prosecutor because he has been assigned to perform his regular duties in considering the inquiry deposition. Regarding the issue on informing the charges to the perpetrator who turns himself in provided that none of the arrest warrant has been issued, the inquiry officer must file the criminal charges within 48 hours. If the failed to do so within the specified time, he must submit the petition for delay filing maximum 5 times, each time not exceeding 6 days, by empowering the inquiry officer to take the perpetrator into custody and bring him to court for the court to issue the arrest

warrant. When the law stipulates that the inquiry officer must submit the filing within 48 hours had not impacted the prosecutor, instead it directly affected the inquiry officer.

The inquiry officer could send the deposition on the case that the perpetrator escaped without the perpetrator presence, which is to the inquiry officer advantages. For the prosecutor, he could check the inquiry deposition to see if the evidence is complete for filing the charges, if not, he could order additional filing. In the case where the deposition is expired, the prosecutor could present the case to the Attorney General to seek approval in advance or he may decide not to file the charge if he found no evidence of wrongdoing. All of these action could be done without the presence of the perpetrator.

The disadvantages of sending the inquiry deposition to the prosecutor involve the case when the prosecutor ordered the filing and informed the inquiry officer to track down the perpetrator where he escaped. The inquiry officer would take the letter from the prosecutor to petition the court for arrest warrant, including the ID of the perpetrator to the prosecutor and he would consider his duty has been completed so that he may erase the case from the prosecutor system and only waiting for apprehending the suspect based on the warrant arrest.

Impact on Judges: The amended Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System in relation to the 4 aforementioned issues, such amendment affected the inquiry officer in collecting evidence and the prosecutor who admitted the deposition from the inquiry officer to consider filing charges within the time the law allowed. Such amendment has no impact on the judge who considered the case under the Summary Court for his duty is to pass the judgment and if the defendant confessed, he could arrange the brief summary. In the case where the defendant denied the charge and put up his defense, then, the judge must prepare full sentence.

The prosecution in the jurisdiction of Thai Local Court has adopted the principle of Due Process of Law and Crime Control. The Supreme Court affirms that 'no one cannot be arrested unless there is a warrant or a court order, or there is any other necessary cause to arrest without a warrant or a court order' (Supreme Court decisions 421/2013 and 11959/2013) in accordance with Criminal Procedure Code section 78, Criminal Procedures In The Summary Court Act 1956 section 4. Thus, in the circumstance where a suspect has appeared before an inquiry officer and the officer has informed the charge to the suspect in accordance with Criminal Procedure Code section 134, it cannot be considered that the suspect has been arrested because there is no warrant and court order, and also not meet the exception of the provision. When the suspect has not been arrested, it is not under the provisions of Sections 7 and 9 of Criminal Procedures In The Summary Court Act 1956, that the plaintiff must file the lawsuit within 48 hours from the time the defendant was caught, or have to delayed filing charges, or have to be allowed to file the lawsuit from Attorney General. According to the Bentley (1948: 381-382) study was the arrest lawful, The interpretation of statutes regarding the personal liberty of persons, particularly the detention of persons ought be construed strictly. Similarly, In Lee (2012: 320) the Court of Appeal examined the circumstances where Mr. Lee had attended a Police Station at the invitation of the Police. Bryson J sets out in his judgment that-arresting a person for questioning him and investigating the circumstances of the suspected offence or of any other offence is arrest for an extraneous purpose. It is even more clearly an extraneous purpose to arrest a person as a piece of unnecessary highhanded and humiliating behaviour in circumstances in which arrest is not reasonably necessary for the effective conduct of a prosecution. The availability of Information and Summons as an alternative course, are relevant where the validity of the exercise of the power to arrest is in question.

At common law, arrest for the purpose of investigation or interrogation is unlawful. Authority for this proposition is found in Brown, Farrier, Egger, McNamara, Steel, Spears, Grewcock, Quilter, & Schwartz (2015: 448-449) per Hampel said:

“The words ‘as soon as practicable’ in the section refer to the time required to bring the person arrested before a justice and not to the time which the police may choose to take after arrest to make further enquiries or conduct further investigations. The section is designed to safeguard persons in custody after arrest from being held by the police for questioning or further investigation or otherwise.”

That view is surely right. If a person cannot be taken into custody for the purpose of interrogation, he cannot be extended to provide time interrogation. It is therefore unlawful for a police officer having the custody of an arrested person to delay taking him before a justice in order to provide an opportunity to investigation that person’s complicity in criminal offence, whether the offence under investigation is the offence for which the person has been arrested or another offence.

In the same case *Wilson and Dawson JJ* found: It is beyond question that at common law no person has power to arrest a person merely for the purpose of questioning him. The question in this case is whether a policeman has any power to defer bringing before a justice a person whom he has arrested in order to use the time to question the person or to investigate in some other way the offence or offences upon suspicion of which the arrest was made or any other offence of offences which the arrested person may have committed. A person who is arrested may be detained only for the purpose of bringing him before a justice, to be dealt with according to law. For arrest is the beginning of imprisonment and, whilst it is recognized that imprisonment before trial may be necessary in the administration of criminal justice, it must be justified in accordance with the law. The point at which an arrested person is brought before a justice upon a charge is the point at which the machinery of the law leading to trial is put into operation. It is the point from which the judicial process commences and purely ministerial function cease (Brown et.al. 2015: 450-451).

Impact on Lawyer: Regarding the amendment of Enforcing Act and the 2013 Criminal Procedures in the Summary Court. Such amendment has created the impact on the inquiry officer in charge of the inquiry and the prosecutor who received the deposition from the inquiry officer to consider whether the case should be up for filing. Therefore, it has no impact the lawyer whatsoever.

Impact on the Victim and the perpetrator to implement the Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act to the Criminal Justice System and the state effectiveness in enforcing the law

Impact to the victim: The amendment of the Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act Changed the practice in 4 issues and created impact on the victim as the stakeholders directly affected by the justice system in the following issues: When the victim turned himself in to the inquiry officer during the time that none of the arrest warrant has been issued, the inquiry officer must file the criminal charges to the Summary Court within 48 hours, starting from the time the perpetrator informed him about the criminal charge. The victim may be satisfied when his case has entered the due process quickly and feel content when the perpetrator was brought to trial and the court passed the judgment quickly. Such case is helpful with the petty case, without complex nature and not many evidence to inspect, including the perpetrator confessed to the crime. On the contrary if the case is complex in nature when the inquiry officer must collect large numbers of evidence that required the victim to testify or give explanation or provide details relevant to the wrongdoing. The process is too complex but it would make him understand the situation better as well as whiffing to assist the perpetrator to collect the evidence, but the perpetrator may be dissatisfied if he had to explain with other people so many times until he was so tried to explain further.

The inquiry deposition that may not be able to file the criminal charge within the specified time that the court allow for delay filing and the prosecutor must seek approval from the

Attorney General to file each case. In the case where the trial is in process, the victim would monitor the court progress and inquiry about the court trial. Then perpetrator learned that the inquiry officer had petition for delay filing criminal charge in court and the delay is expired, the perpetrator would be afraid and felt that the inquiry officer had not prepared the case thoroughly and let the case expired, Then the perpetrator would not feel confidence in court procedure and misunderstood the procedure to seek approval from the Attorney General. This is when the victim the process to seek approval from the Attorney General may delay the case as well as losing confidence in the Attorney General whether he would agree with the perpetrator who presented the opinion. The inquiry officer could deliver the inquiry deposition regarding the case that the perpetrator escaped to the prosecutor without the impact on the perpetrator.

Impact on the perpetrator: In the case where the perpetrator turned himself in to the inquiry officer during the time that no arrest warrant had been issued the inquiry officer must submit such case to the Summary Court within 48 hours since the time of informing the charges to the perpetrator, it is to the advantage of the perpetrator in the petty case and when the perpetrator in the petty case and when the perpetrator confessed, the court would then pass on the sentence for the speedy trial and the perpetrator could be released without putting up bail in court or report himself to the court on the specified date. In a case where the perpetrator had not committed any wrongdoing or without confession, the court would initiate the reconciliation process by becoming the mediator and consultant to point out the advantages and disadvantages if the perpetrator denied or admitted his guilt. If he denied the charge, he would pay heavy penalty or in case of confession the court would waive the case, pending the criminal sentencing and ask the perpetrator to pay the fine to make the case out of the court.

When the charge has been informed to the perpetrator during that time none of the arrest had been issued, the inquiry officer must file the criminal charges within 48 hours, otherwise he may petition for delay filing maximum 5 times and each time not exceeding 6 days, having the inquiry officer taken the perpetrator into custody and bring him to court for issuing the arrest warrant. This is to the perpetrator disadvantages because once the inquiry officer had submitted the petition for delay filing and detention warrant, requesting the court for temporary imprisonment. Therefore, the perpetrator must put up the collateral for bail to request temporary release from the court, the perpetrator is then could be released, which directly added burden to the perpetrator.

Regarding the inquiry deposition that the inquiry officer was unable to deliver to the prosecutor within the court allowed delay time. The inquiry deposition must be submitted to the Attorney General to seek his approval in every cases, the process to seek approval from the Attorney General resulted from the prosecutor was unable to petition to court within the specified time, and it may need the additional inquiry of waiting for the evidence in such inquiry, depending on the fact from the inquiry deposition. When the delayed filing expired and the perpetrator court put up the bail in court, the court would release the perpetrator and he could ask for the collateral back from the court. However, the perpetrator would not know about the process to approval from the Attorney General, when the Attorney General approval the filing of criminal charges, the prosecutor would inform the inquiry officer to contact the perpetrator to bring him to court for filing criminal charge in court. If the inquiry officer was unable to track him down, the inquiry officer would petition the court for arrest warrant and sent the arrest warrant to the prosecutor to process further and the perpetrator would be apprehended by the police based on the arrest warrant and bring to the prosecutor.

The case where the inquiry officer had informed the perpetrator and released the perpetrator without detention is the practice that contradicted with the authorized law, put the petition was submitted to the court for delay filing the criminal charges and when the delayed filing has reached the maximum 5 times, the perpetrator was still not turning himself in on the set

date. But the inquiry officer could sent the inquiry deposition on the escaped perpetrator to the prosecutor with not impact, provided that the deposition that the prosecutor considered the inquiry deposition and presented to the prosecutor to consider the case and submitted to the Attorney General to seek approval for filing the charges as the issue No. (3).

Effectiveness in the implementation of Enforcing Act and the 2014

Criminal Procedures in the Summary Court Act by the state the intention in amending the said Act is to have the court control the court trial of perpetrator in the inquiry level from the beginning in which the court could control the evidence by the inquiry officer, from issuing the search warrant, arrest warrant and informing the perpetrator on the charges, then the law required the inquiry officer to file the criminal charge within 48 hours by submitted the petition to delay filing, maximum 5 times, each time not exceeding 6 days, as to empower the court to examine the evidence and push the inquiry officer to proceed as plan as to apply the Due Process of Law as the guidelines for strictly following the practice and if he is unable to file the criminal charge on the court specified time for delay filing such deposition must be approved by the Attorney General before the prosecutor could proceed with filing the charges, without the approval from the Attorney General, the court would dismiss the case. This is to empower the court as the mediator to check the process before filing the case during the investigation.

Furthermore, the law force the inquiry officer to rush into filing within 48 hours starting from informing the charge and if the case was not done on time the filing for delay could be done for maximum 5 times, each time 6 days a week, as being the crime control theory to enforce when the crime had been committed since the wrongdoing occurred and the perpetrator was apprehended or turn himself in, the inquiry officer must file the charges within 48 hours starting from the time of informing the charge as to speed up the trial so that other people in the society could see that those violation the law would be punished and not to repeat the same action as being the intention to modify the Enforcing Act and the 2014 Criminal Procedures in the Summary Court Act and in the line with the Due Process theory and Crime Control Theory.

The law requires the inquiry officer to file the charges 48 hours from the time of informing the charge is the benefit from enforcing the law as to rush the inquiry officer to bring the case to court so no one would dare to repeat the same action. This has produced the psychological affect as well as proving that state law enforcement is effective.

Problems and setbacks on practicing the Enforcing Act and the 2014

The findings from data collection on samples comprised of the inquiry officer, prosecutor, court, lawyers victims and perpetrators as the experts in the field and perform judicial functions on the cases under the Summary Court suggest problems and setbacks in the following areas:

The perpetrator turned himself in during that time none of the arrest warrant had been issued, then, the inquiry officer after informing the perpetrator about the charge had not been done in the same direction with the practice in approaches as follows:

- 1) Guideline 1: After the charges had been informed the inquiry had been done with the perpetrator, the inquiry officer would release the court within 48 hours from the time informing about the charges. The practice following the guideline 1 would benefit the perpetrator who had been informed of the charges because it would not bother him to find the collateral for bail in court.
- 2) Guideline 2: When the inquiry officer informed the perpetrator about the charge, he would take the perpetrator into custody and bring him to the court for requesting the delay filing and temporary imprisonment 48 hours, starting from the time informing the perpetrator as well as requesting the arrest warrant from the court if the perpetrator chose not to petition for temporary released, then, the perpetrator would be kept in prison. Therefore, the perpetrator

most of times chose to put up the bail. The reason for differences in both approaches resulted from misunderstanding in the inquiry officer practice. If the inquiry officer followed the second guideline, the problem in tracking down the perpetrator should be less and in turn, the volume of deposition to seek approval from filing the charges should be less.

As for the inquiry practice based on the first guideline, the problem occurred on tracking down the perpetrator to coincide with the deposition that must be delivered to the prosecutor for filing. The perpetrator would postpone the appointment or stating no time to meet the officer, making it impossible for the inquiry officer to deliver the inquiry deposition within the time the court allows to delay filing. When the expired deposition is sent to the prosecutor, he would examine such deposition whether it contained ample evidence before presenting it to the Attorney General for his approval, which accumulate in large number if guideline No.1 is being used.

Seeking approval to file the criminal charges is time-consuming process due to large volume of the inquiry deposition sending to the Attorney General and kept increasing. All deposition under the Summary Court from the Summary Court Prosecutor Officer must be submitted to the Attorney General for seek approval to file the criminal charges only, making the case pile up and thus delay the authorization process. The samples agreed the power should be decentralized, from the Attorney General to the Director General for speedy process. Tracking down the perpetrator after the prosecutor ordered the filing of case and informed the inquiry officer to find the perpetrator as a result of the law requires the inquiry officer to deliver the inquiry deposition to the prosecutor in advance. When the prosecutor admitted the inquiry deposition, he could then considered the filing or if the Attorney General approved the filing of charges, the prosecutor would issue the letter to the inquiry officer to find the perpetrator and bring him to court in which the inquiry officer is uncertain if the inquiry has the power to detain the perpetrator once found. The inquiry officer would petition the court for the arrest warrant, and when the court approved that arrest, the inquiry officer would send the deposition and ID to the prosecutor and the prosecutor would include in the deposition that the arrest warrant had been issued and the case had been removed from the system, awaiting for the perpetrator to be arrested based on such arrest warrant.

Suggestions

Suggestions on Policy

1. Royal Thai Police should arrange training for the inquiry officer under the Royal Thai Police so they would understand the performance procedures in accordance to the Enforcing Act and the 2013 Criminal Procedures in the Summary Court Act to the Criminal Justice System in the same direction.
2. The prosecutor should train the inquiry officer on the case where the deposition missed the delay period and instead it needs approval from the Attorney General or the Director General to file the lawsuit so there is no need for the prosecutor to make additional inquiry and sow down the case.
3. Arrange the meeting between the inquiry officer, the prosecutor and the judge, for them to ensure the correct procedures and come to the same understanding in the practice of each division as well as knowing each other limitation.

Practical suggestions

1. In each jurisdiction area to Court of Justice, the Consultation Center in prosecuting cases should be established to avoid the operational error as well as strengthening relationship among the operational officers in the judicial process to ease the practice, aiming to prosecute the case in consistence with the law and bring the perpetrator to justice.
2. Royal Thai Police should focus on tracking and arresting the alleged perpetrator based in the arrest warrant since the alleged perpetrator is still escape the prosecution, the police

officer should hurriedly investigate numbers of arrest warrant under the responsibility and assign the police officer to track down the alleged perpetrator for further prosecution.

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