

A BILL

*intituled*

An Act to amend the Criminal Procedure Code.

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Criminal Procedure Code (Amendment) Act 2004.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**Amendment of section 2**

**2.** The Criminal Procedure Code [*Act 593*], which is referred to as the "Code" in this Act, is amended in subsection 2(1) by substituting for the definition of "youthful offender" the following definition:

' " youthful offender" means a person convicted of an offence punishable by fine or imprisonment who is of or above the age of eighteen and below the age of 21;'

**Amendment of section 10**

3. Section 10 of the Code is amended—

- (a) in the shoulder note, by deleting the words "seven miles of; and
- (b) in subsection (1), by deleting the words "seven miles of.

**Amendment of section 13**

4. Paragraph 13(1)(a) of the Code is amended by inserting after the words "369," the words "376, 377c, 377E,".

**New Chapter XIIA**

5. Part IV of the Code is amended by inserting after Chapter XII the following Chapter:

' "CHAPTER XIIA

ANCILLARY INVESTIGATIVE POWERS IN  
RELATION TO TERRORISM  
OFFENCES

**Interpretation in relation to this Chapter**

**106A.** In this Chapter—

"communication" means a communication received or transmitted by post or a telegraphic, telephonic or other communication received or transmitted by electricity, magnetism or other means;

"communications service provider" means a person who provides services for the transmission or reception of communications;

"terrorism offence" means a terrorist act or a terrorism financing offence.

**Powers of arrest**

**106B.** Any police officer may arrest without warrant any person who has committed or is committing or whom he has reasonable grounds for suspecting to have committed or to be committing a terrorism offence.

**Power to intercept communications and admissibility of intercepted communications**

**106c.** (1) Notwithstanding any other written law, the Public Prosecutor, if he considers that it is likely to contain any information relating to the commission of a terrorism offence, may authorize any police officer—

- (a) to intercept, detain and open any postal article in the course of transmission by post;
- (b) to intercept any message transmitted or received by any telecommunication; or
- (c) to intercept or listen to any conversation by telecommunication.

(2) The Public Prosecutor, if he considers that it is likely to contain any information relating to the commission of a terrorism offence, may—

- (a) require a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communications service provider; or
- (b) authorize a police officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain such device.

(3) Where any person is charged with a terrorism offence, any information obtained in pursuance of subsection (1) or (2), whether before or after such person is charged, shall be admissible as evidence at his trial."

**New section 107A**

6. Chapter XIII of the Code is amended by inserting after section 107 the following section:

**"Report on status of investigation**

**107A.** (1) Any person who has given information under section 107 may request for a report on the status of the investigation of the offence complained of in his information from the officer in charge of a police station where he gave the information.

(2) The officer in charge of a police station shall give a status report on the investigation of such offence to the informant not later than two weeks from the receipt of the request made under subsection (1).

(3) Notwithstanding subsection (2), no officer in charge of a police station shall be required to provide a status report on an investigation of an offence—

- (a) unless the offence complained of is a seizable offence;
- (b) unless a period of four weeks has lapsed from the date of the giving of the information under section 107; and
- (c) which contains any matter that is likely to adversely affect the investigation into the offence or the prosecution of the offence.

(4) Where a request has been made under subsection (1) and the officer in charge of the police station has failed to furnish the informant with a status report within the period specified in subsection (2), but subject to subsection (3), the informant may make a report to the Public Prosecutor of the failure.

(5) Upon receipt of the report under subsection (4), the Public Prosecutor shall direct the Officer in charge of the Police District to furnish him with a detailed status report on the investigation that has been conducted by the police in relation to the offence in the information given by the informant.

(6) The Public Prosecutor shall cause to be furnished to the informant, or direct the Officer in charge of the Police District to furnish to the informant, a status report containing such information as may be directed by the Public Prosecutor.

(7) A police officer who fails to comply with a directive of the Public Prosecutor under this section commits an offence and shall on conviction be liable to imprisonment for a term which may extend to one month or to fine which may extend to one thousand ringgit or to both."

**Amendment of section HO**

7. Section 110 of the Code is amended by inserting after subsection (3) the following subsection:

"(4) A police officer who fails to submit a report to the Public Prosecutor under subsection (1), or fails to state the reasons as required under subsection (2), commits an offence and shall on conviction be liable to imprisonment for a term which may extend to one month or to a fine which may extend to one thousand ringgit or to both."

**Amendment of section 111**

8. Subsection 111(1) of the Code is amended by deleting the words "being within the limits of the police district in which he is making an investigation".

**Amendment of section 120**

9. The Code is amended by substituting for section 120 the following section:

**"Report of police officer**

**120. (1)** Every police investigation under this Chapter shall be completed without unnecessary delay, and the officer making the investigation shall, unless the offence is of a character which the Public Prosecutor has directed need not be reported

to him, submit to the Public Prosecutor a report of his investigation together with the investigation papers in respect of such investigation within one week of the expiry of the period of three months from the date of the information given under section 107.

(2) Notwithstanding subsection (1), the Public Prosecutor may at any time, regardless that the period of three months mentioned in subsection (1) has not expired, direct the officer making the investigation or the Officer in charge of the Police District to submit to the Public Prosecutor a report in the form in the Second Schedule and the investigation papers in respect of the police investigation.

(3) A police officer who fails to submit the report and investigation papers under this section commits an offence and shall on conviction be liable to imprisonment for a term which may extend to one month or to a fine which may extend to one thousand ringgit or to both."

#### **Amendment of section 127A**

**10.** Subsection 127A(1) of the Code is amended—

- (a) by substituting for the words "Chapter VI" the words "Chapters VI and VIA";
- (b) by deleting the word "or" at the end of paragraph (b);
- (c) by substituting for the comma at the end of paragraph (c) a semicolon; and
- (d) by inserting after paragraph (c) the following paragraphs:
  - "(d) by any person against a citizen of Malaysia;
  - (e) by any person against property belonging to the Government of Malaysia or the Government of any State in Malaysia located outside Malaysia, including diplomatic or consular premises of Malaysia;
  - (f) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;

- (g) by any stateless person who has his habitual residence in Malaysia;
- (h) by any person against or on board a fixed platform while it is located on the continental shelf of Malaysia; or
- (i) by any person who after the commission of the offence is present in Malaysia,".

**Amendment of section 173**

**11.** Section 173 of the Code is amended by inserting after paragraph (h) the following paragraph:

"(ha) (i) When the Court calls upon the accused to enter on his defence under subparagraphs (h)(i), the Court shall read and explain the three options for the defence to the accused which are as follows:

- (A) to give sworn evidence in the witness box;
- (B) to give unsworn evidence from the dock; or
- (C) to remain silent.

(ii) If the accused elects to give unsworn evidence or to remain silent, he shall not be cross-examined by the prosecution:

Provided that where the accused elects to give unsworn evidence from the dock and his defence relates to his cautioned statement which forms part of the prosecution's evidence, he may be cross-examined by the prosecution."

**Amendment of section 256**

**12.** Section 256 of the Code is amended —

- (a) in subsections (5) and (6), by substituting for the words "a prisoner" the words "an accused";
- (b) in subsection (7), by substituting for the word "prisoner" the word "accused"; and

(c) in subsection (8) —

- (i) by substituting for the words "in English" the words "in the national language"; and
- (ii) by substituting for the word "English" the word "national".

**New section 272B**

**13.** Chapter XXV of the Code is amended by inserting after section 272A the following section:

**"Evidence through live video or live television links**

**272B.** (1) Notwithstanding any other provision of this Code or the Evidence Act 1950, a person, other than the accused, may, with leave of the court, give video or live evidence through a live video or live television link in any trial or inquiry, if it is expedient in the interest of justice to do so.

(2) Subsection (1) shall apply in relation to the following offences:

- (a) an offence which involves an assault on, or an injury or a threat of injury, to persons including but not limited to sections 319 to 338 of the Penal Code;
- (b) an offence under sections 354 to 358 and sections 376, 376B, 377, 377B, 377C, 377D and 377E of the Penal Code; and
- (c) such other offences as the Minister may, after consulting the Chief Justice and the Public Prosecutor, prescribe.

(3) The Court may, in the exercise of its power under subsection (1), make an order on any or all of the following matters:

- (a) the persons who may be present at the place where the witness is giving evidence;
- (b) that a person be excluded from the place while the witness is giving evidence;

- (c) the persons in the courtroom who must be able to be heard, or seen and heard, by the witness, and by the persons with the witness;
- (d) the persons in the courtroom who must not be able to be heard, or seen and heard, by the witness and by the persons with the witness;
- (e) the persons in the courtroom who must be able to see and hear the witness and the persons with the witness;
- (f) the stages in the proceedings during which a specified part of the order is to have effect;
- (g) the method of operation of the live video or live television link system including compliance with such minimum technical standards as may be determined by the Chief Justice; and
- (h) any other order the court considers necessary in the interest of justice.

(4) The Court shall not give leave under subsection (1) or make an order under subsection (3) if, in the opinion of the Court, to do so would be inconsistent with the court's duty to ensure that the proceedings are conducted fairly to the parties to the proceedings.

(5) Evidence given by a witness through live video or live television link by virtue of this section shall be deemed for the purposes of sections 193, 194, 195, 196, 205 and 209 of the Penal Code as having been given in the proceedings in which it is given.

(6) Where a witness gives evidence in accordance with this section, he shall for the purposes of this Code and the Evidence Act 1950 be deemed to be giving evidence in the presence of the Court, the accused person or his advocate, as the case may be.

(7) Where any video or live evidence given under this section is recorded on any medium, electronic or otherwise, such recording shall form part of the record."

**Amendment of section 289**

14. Paragraph 289fcJ of the Code is amended by inserting after the word "age" the words ", except males sentenced to whipping under section 376, 377c or 377E of the Penal Code".

**Amendment of section 291**

15. Subsection 291(1) of the Code is amended by substituting for the word "twelve" the word "twenty-four".

**Amendment of section 293**

16. Section 293 of the Code is amended—

- (a) in subsection (1), by substituting for the words "Juvenile Courts Act 1947 [*Act 90*]" the words "Child Act 2001 [*Act (577)*";
- (b) by deleting subsection (2); and
- (c) in subsection (3), by substituting for the words "Juvenile Courts Act 1947" the words "Child Act 2001".

**Amendment of section 294**

17. Subsection 294(1) of the Code is amended by substituting for the words "not being a youthful offender has been convicted of any offence punishable with imprisonment" the words "has been convicted of any offence".

**Amendment of section 295**

18. Section 295 of the Code is amended by inserting after subsection (1) the following subsection:

" (1A) When a person is convicted of an offence under section 376, 377c or 377E of the Penal Code before any Court, the Court shall direct that he be subject to the supervision of the police for a period of not less than one year and not more than three years commencing immediately after the expiration of the sentence passed on him."

**Amendment of section 307**

19. Section 307 of the Code is amended in subsections (1) and (4) and paragraph (5)(b) by substituting for the word "ten" the word "fourteen".

**Amendment of First Schedule**

20. The First Schedule to the Code is amended—

- (a) in the items relating to sections 121, 121A, 121B, 121C, 121D, 122, 123, 124, 125, 125A, 126, 127, 128, 129 and 130 of the Penal Code, in column 3, by substituting for the words "Shall not arrest without warrant" the words "May arrest without warrant";
- (b) by inserting after the item relating to section 130 of the Penal Code the following items under the respective columns:

1	2	3	4	5	6	7
<i>Penal Code section</i>	<i>Offence</i>	<i>Whether the police may ordinarily arrest without warrant or not</i>	<i>Whether a warrant or a summons shall ordinarily issue in the first instance</i>	<i>Whether bailable or not</i>	<i>Whether compoundable or not</i>	<i>Maximum punishment under the Penal Code</i>

CHAPTER VIA—OFFENCES RELATING TO TERRORISM

*Suppression of terrorist acts and support for terrorist acts*

130c	Committing terrorist acts	May arrest without warrant	Warrant	do. Not bailable	Not compoundable	Death; or imprisonment for not less than seven years but not exceeding thirty years, and fine
			do. do.	do.		
130D	Providing devices to terrorist groups	do.			do.	Imprisonment for life, or imprisonment for thirty years, and fine
130E	Recruiting persons to be members of terrorist groups or to participate in terrorist acts	do.			do.	Imprisonment for thirty years, and fine

1 <i>Penal Code section</i>	2 <i>Offence</i>	3 <i>Whether the police may ordinarily arrest without warrant or not</i>	4 <i>Whether a warrant or a summons shall ordinarily issue in the first instance</i>	5 <i>Whether bailable or not</i>	6 <i>Whether compoundable or not</i>	<i>Maximum punishment under the Penal Code</i>
130F	Providing training and instruction to terrorist groups and persons committing terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine
130G	Inciting, promoting or soliciting property for the commission of terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine
130H	Providing facilities in support of terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine
130I	Directing activities of terrorist groups	do.	do.	do.	do.	Death; or imprisonment for not less than seven years but not exceeding thirty years, and fine
130J	Soliciting or giving support to terrorist groups or the commission of terrorist acts	do.	do.	do.	do.	Imprisonment for life, or imprisonment for thirty years; or fine, and forfeiture of certain property
130K	Harbouring persons committing terrorist acts	do.	do.	do.	do.	Imprisonment for life, and fine; or imprisonment for twenty years; or fine

*Criminal Procedure Code (Amendment)*

1 <i>Penal Code section</i>	2 <i>Offence</i>	3 <i>Whether the police may ordinarily arrest without warrant or not</i>	4 <i>Whether a warrant or a summons shall ordinarily issue in the first instance</i>	5 <i>Whether bailable or not</i>	6 <i>Whether compoundable or not</i>	7 <i>Maximum punishment under the Penal Code</i>
130M	Intentional omission to give information relating to terrorist acts	do.	do.	do.	do.	Imprisonment for seven years, or fine, or both
<i>Suppression of financing of terrorist acts</i>						
130N	Providing or collecting property for terrorist acts	do,	do.	do.	do.	Death; or imprisonment for not less than seven years but not exceeding thirty years, and fine, and forfeiture of certain property
130o	Providing services for terrorist purposes	do,	do.	do.	do.	Death; or imprisonment for not less than seven years but not exceeding thirty years, and fine
130P	Arranging for retention or control of terrorist property	do.	do	do	do	Imprisonment for thirty years, and fine, and forfeiture of certain property
130Q	Dealing with terrorist					Imprisonment for twenty years; or fine, and forfeiture of certain property
130K	property Intentional omission to give information about terrorist property	do.	do	do	do	Imprisonment for seven years, or fine, or both

1 <i>Penal Code section</i>	2 <i>Offence</i>	3 <i>Whether the police may ordinarily arrest without warrant or not</i>	4 <i>Whether a warrant or a summons shall ordinarily issue in the first instance</i>	5 <i>Whether bailable or not</i>	6 <i>Whether compoundable or not</i>	7 <i>Maximum punishment under the Penal Code</i>
130s	Intentional omission to give information relating to terrorism financing offence	do.	do.	do.	do.	Imprisonmt or seven yt for fine, or both \

- (c) in the item relating to section 304 of the Penal Code, in column 7, by substituting for the word "twenty" the word "thirty";
- (d) in the item relating to section 364 of the Penal Code, in column 7, by substituting for the word "twenty" the word "thirty";
- (e) by inserting after the item relating to section 374 of the Penal Code, the following item under the respective columns:

1 <i>Penal Code section</i>	2 <i>Offence</i>	3 <i>Whether the police may ordinarily arrest without warrant or not</i>	4 <i>Whether a warrant or a summons shall ordinarily issue in the first instance</i>	5 <i>Whether bailable or not</i>	6 <i>Whether compoundable or not</i>	7 <i>Maximum punishment under the Penal Code</i>
374A	Hostage-taking	May arrest without warrant	Warrant	Not bailable	Not compoundable	Death; or imprisonment for not less than seven years but not exceeding thirty years, and fine \

(f) by substituting for the item relating to section 376 of the Penal Code the following items under the respective columns:

1 Penal Code section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
"376(1) Rape		May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for not less than five years and not more than twenty years and whipping
376(2) rape	Incestuous rape	do.	do.	do.	do.	Imprisonment for not less than fifteen years and not more than thirty years, and whipping for not less than ten strokes
376(3)	Causing death while committing or attempting to commit rape	do.	do.	do.	do.	Death ;

(g) in the item relating to section 396 of the Penal Code, in column 7, by substituting for the word "twenty" the word "thirty"; and

(h) in the item relating to section 460 of the Penal Code, in column 7, by substituting for the word "twenty" the word "thirty".

EXPLANATORY STATEMENT This Bill

seeks to amend the Criminal Procedure Code ("Act 593").

2. Clause 1 contains the short title and provisions on the commencement of the proposed Act.

3. *Clause 2* seeks to amend subsection 2(1) of Act 593. This amendment seeks to substitute the definition of "youthful offender" to mean a person convicted of an offence punishable with fine or imprisonment who is of the age of eighteen and above but below the age of twenty-one.

4. *Clause 3* seeks to amend subsection 10(1) of Act 593 to remove the limit of seven miles in the provision which states that a person who has committed an offence in any place within any State which is near the boundary of any other State is not entitled as of right to be tried within the first-mentioned State.

5. *Clause 4* seeks to amend section 13 of Act 593 to include offences under sections 376, 377c and 377E of the Penal Code as offences in respect of which information must be given.

6. *Clause 5* seeks to amend Part IV of Act 593. This amendment seeks to introduce a new Chapter, namely Chapter XIIA which consists of new sections 106A to 106c, into Part IV of Act 593. The new Chapter XIIA deals with special ancillary powers of the police and the Public Prosecutor in relation to terrorism offences.

The new section 106A defines certain expressions used in Chapter XIIA, including the expression "terrorism offence".

The new section 106B seeks to empower a police officer to arrest without warrant any person who has committed or is committing or whom he has reasonable grounds for suspecting to have committed or to be committing a terrorism offence.

The new section 106c seeks to empower the Public Prosecutor to authorize a police officer to intercept certain communications if the Public Prosecutor considers that the communications are likely to contain information relating to the commission of a terrorism offence. The information so obtained, whether before or after the person concerned is charged, shall be admissible at his trial in evidence.

7. *Clause 6* seeks to amend Chapter XIII of Act 593 by introducing a new section 107A to allow any person who have given information of an offence under section 107 to request the police to give a report on the status of investigation. The police is only required to give the status report if the offence is a seizable offence, four weeks have lapsed from the date of the information and it does not contain any matter that is likely to adversely affect the investigation or prosecution of the offence. The informant may report any failure on the part of the police to furnish the status report to the Public Prosecutor. The Public Prosecutor shall direct the Officer in charge of the Police District to furnish the status report to the informant. Failure to comply with the direction of the Public Prosecutor is an offence.

8. *Clause 7* seeks to amend section 110 of Act 593 by inserting subsection (4) to make it an offence if the police officer fails to submit a report to the Public Prosecutor of information of a seizable offence received by him.

9. *Clause 8* seeks to amend subsection 111(1) of Act 593 to allow a police officer to order any person who is acquainted with the circumstances of the case under his investigation to appear before him irrespective of whether that person is within the limits of the police district in which he is making the investigation.
10. *Clause 9* seeks to amend section 120 of Act 593 to tighten the current provisions. The police officer making the investigation shall submit a report of his investigation together with the investigation papers regarding the investigation to the Public Prosecutor within one week from the expiry of the period of three months from the date of the information given under section 107. Failure to do so is an offence.
11. *Clause 10* seeks to amend subsection 127A(1) of Act 593 to extend the application of the section to extra-territorial offences under the new Chapter VIA of the Penal Code and to add additional grounds on which extra-territorial criminal jurisdiction may be sought.
12. *Clause 1.1* seeks to amend section 173 of Act 593 to specifically provide for the Court's duty to explain the three options of defence to the accused.
13. *Clause 12* seeks to amend section 256 of Act 593. The amendments seek to make consistent the usage of the word "accused" throughout the section and to reflect the usage of the national language in the Courts.
14. *Clause 13* seeks to introduce a new section, namely section 272B, into Act 593 to enable a witness, other than the accused, with leave of the court, to give video or live evidence through a live video or live television link in any trial or inquiry if it is expedient in the interest of justice.
15. *Clause 14* seeks to amend section 289 of Act 593 to allow the punishment of whipping to be carried out on a male offender who is or more than fifty years of age if he is sentenced to whipping under section 376, 377c or 377E of the Penal Code.
16. *Clause 15* seeks to amend section 291 of Act 593 to increase the term of imprisonment in lieu of whipping, from twelve months to twenty-four months, if the sentence of whipping is prevented from being executed under section 290 of Act 593.
17. *Clause 16* seeks to amend section 293 of Act 593 to substitute the reference to the Juvenile Courts Act 1947 with the reference to the Child Act 2001. The Juvenile Courts Act 1947 was repealed by the Child Act 2001 which came into operation on 1 August 2002.
18. *Clause 17* seeks to amend section 294 of Act 593 to allow for the section to be applied to any person who is a first offender irrespective of whether he has been convicted of an offence punishable with imprisonment or with fine only and whether he is a youthful offender or an adult offender.

19. *Clause 18* seeks to amend section 295 of Act 593 to require the Court to direct an offender sentenced under sections 376, 377c or 377E of the Penal Code to undergo police supervision.

20. *Clause 19* seeks to amend section 307 of Act 593 to increase the duration of time to file notice of appeal and petition of appeal from ten days to fourteen days.

21. *Clause 20* seeks to amend the First Schedule to Act 593 consequential to the proposed amendments to the Penal Code in relation to the offences of incestuous rape, terrorism and hostage-taking.

*FINANCIAL IMPLICATIONS*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U<sup>2</sup>)2359]