



LAWS OF MALAYSIA

Act A1274

**CRIMINAL PROCEDURE CODE (AMENDMENT)
ACT 2006**

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LAWS OF MALAYSIA**Act A1274****CRIMINAL PROCEDURE CODE (AMENDMENT)
ACT 2006**

An Act to amend the Criminal Procedure Code.

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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 2006.

(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)—

- (a) by deleting the definition of “Malay States”; and
- (b) by substituting for the definition of “youthful offender” the following definition:

‘ “youth 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 twenty-one.’.

Deletion of section 10

3. The Code is amended by deleting section 10.

Amendment of section 13

4. Paragraph 13(1)(a) of the Code is amended by substituting for the words “376, 377C, 377E,” the words “372, 372A, 372B, 376, 376B, 377C, 377CA, 377E,”.

New section 20A

5. The Code is amended by inserting after section 20 the following section:

“Procedure on search of a person

20A. (1) Any search of a person shall comply with the procedure on body search as specified in the Third Schedule of this Code.

(2) Notwithstanding any written law, the provisions of the Third Schedule shall apply to any search of a person conducted by any officer of any enforcement agency conferred with the power of arrest or search of a person under any law.

(3) The Minister charged with the responsibility for internal security and public order may amend the Third Schedule by order published in the *Gazette*.”.

Amendment of section 28

6. Section 28 of the Code is amended—

- (a) in subsection (1), by substituting for the words “Magistrate’s Court” the word “Magistrate”; and
- (b) in subsection (3), by substituting for the words “Magistrate’s Court” the word “Magistrate”.

New section 28A

7. The Code is amended by inserting after section 28 the following section:

“Rights of person arrested

28A. (1) A person arrested without a warrant, shall be informed as soon as may be of the grounds of his arrest by the police officer making the arrest.

(2) A police officer shall before commencing any form of questioning or recording of any statement from the person arrested, inform the person that he may—

(a) communicate or attempt to communicate, with a relative or friend to inform of his whereabouts; and

(b) communicate or attempt to communicate and consult with a legal practitioner of his choice.

(3)(a) Where the person arrested wishes to communicate or attempt to communicate with the persons referred to in paragraphs (2)(a) and (b), the police officer shall, as soon as may be, allow the arrested person to do so.

(b) Where the person arrested has requested for a legal practitioner to be consulted the police officer shall allow a reasonable time—

(i) for the legal practitioner to be present to meet the person arrested at his place of detention; and

(ii) for the consultation to take place.

(c) The consultation under paragraph (b) shall be within the sight of a police officer and in circumstances, in so far as practicable, where their communication will not be over heard;

(d) The police officer shall defer any questioning or recording of any statement from the person arrested for a reasonable time until the communication or

attempted communication under paragraph 2(b) or the consultation under paragraph (b), has been made; and

(e) The police officer shall provide reasonable facilities for the communication and consultation under this section and all such facilities provided shall be free of charge.

(4) The requirements under subsections (2) and (3) shall not apply where the police officer reasonably believes that—

(a) compliance with any of the requirements is likely to result in—

(i) an accomplice of the person arrested taking steps to avoid apprehension; or

(ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or

(b) having regard to the safety of other persons the questioning or recording of any statement is so urgent that it should not be delayed.

(5)(a) Subsection (4) shall only apply upon authorization by a police officer not below the rank of Deputy Superintendent of Police.

(b) The police officer giving the authorization under paragraph (a) shall record the grounds of belief of the police officer that the conditions specified under subsection (4) will arise and such record shall be made as soon as practicable.

(6) The investigating officer shall comply with the requirements under subsections (2) and (3) as soon as possible after conditions specified under subsection (4) have ceased to apply where the person arrested is still under detention under this section or under section 117.”

New section 51A

8. The Code is amended by inserting after section 51 the following section:

“Delivery of certain documents

51A. (1) The prosecution shall before the commencement of the trial deliver to the accused the following documents:

- (a) a copy of the information made under section 107 relating to the commission of the offence to which the accused is charged, if any;
- (b) a copy of any document which would be tendered as part of the evidence for the prosecution; and
- (c) a written statement of facts favourable to the defence of the accused signed under the hand of the Public Prosecutor or any person conducting the prosecution.

(2) Notwithstanding paragraph (c), the prosecution may not supply any fact favourable to the accused if its supply would be contrary to public interest.”.

New Chapter XIIA

9. 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.”.

Amendment of section 107

10. Section 107 of the Code is amended by inserting after subsection (2) the following subsections:

“(3)(a) Notwithstanding subsection (1), information given by a person relating to the commission of an offence to a police officer, who at the time of receiving the information is not in a police station, shall be deemed to be received at a police station;

(b) A police officer receiving such information under paragraph (a) where practicable shall record or cause to be recorded the name and address of the informant, the date and time of the receipt of such information, and shall convey such information to an officer in charge of a police station or any police officer whose duty is to receive such information; and

(c) Such information shall be reduced in writing and entered in a book in accordance with subsections (1) and (2) and shall subsequently be signed by the person who gave the information.

(4) A police officer shall be duty bound to receive any information in relation to any offence committed anywhere in Malaysia.”.

New section 107A

11. 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.”.

Amendment of section 111

12. Section 111 of the Code is amended—

(a) in subsection (1)—

(i) by deleting the words “being within the limits of the police district in which he is making an investigation”;

(ii) by substituting for the colon after the words “so required” the full stop; and

(iii) by deleting the proviso; and

(b) by deleting subsection (3).

Amendment of section 112

13. Section 112 of the Code is amended in subsection (5), by deleting the words “whether or not a caution has been administered to him under subsection 113(1)”.

Amendment of section 113

14. The Code is amended by substituting for section 113 the following section:

“Admission of statements in evidence

113. (1) Except as provided in this section, no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to a police officer in the course of a police investigation under this Chapter and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [*Act 56*].

(3) Where the accused had made a statement during the course of a police investigation such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraph 32(1)(a) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to—

(a) the making; or

(b) the contents,

of any statement made by him to a police officer in the course of a police investigation made under this Chapter, that statement may be used as evidence in the prosecution's case.”.

Amendment to section 114

15. The Code is amended in section 114 by deleting the words “by any caution or otherwise”.

Deletion of section 115

16. The Code is amended by deleting section 115.

Amendment of section 117

17. Section 117 of the Code is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) The Magistrate before whom an accused person is produced under this section may, whether he has or has no jurisdiction to try the case, authorize the detention of the accused in such custody as follows:

(a) if the offence which is being investigated is punishable with imprisonment of less than

fourteen years, the detention shall not be more than four days on the first application and shall not be more than three days on the second application; or

(b) if the offence which is being investigated is punishable with death or imprisonment of fourteen years or more, the detention shall not be more than seven days on the first application and shall not be more than seven days on the second application.”;

(b) by inserting after subsection (2) the following subsections:

“(3) The officer making the investigation shall state in the copy of the entries in the diary referred to in subsection (1), any period of detention of the accused immediately prior to the application, whether or not such detention relates to the application.

(4) The Magistrate, in deciding the period of detention of the accused person, shall take into consideration any detention period immediately prior to the application, whether or not such detention relates to the application.

(5) The Magistrate in deciding the period of detention of the accused shall allow representations to be made either by the accused himself or through a counsel of his choice.

(6) If the Magistrate has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.”; and

(c) by renumbering subsection (3) as subsection (7).

Amendment of section 119

18. Subsection 119(2) of the Code is amended by deleting the words “[Act 56]”.

Amendment of section 120

19. 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.”.

Amendment of section 127A

20. 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

21. Section 173 of the Code is amended—

(a) in paragraph (h), by inserting after subparagraph (ii) the following subparagraph:

“(iii) For the purpose for subparagraphs (i) and (ii), a *prima facie* case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.”; and

(b) by inserting after paragraph (h) the following paragraph:

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

- (i) to give sworn evidence in the witness box;
- (ii) to give unsworn statement from the dock; or
- (iii) to remain silent.”.

Amendment of section 180

22. Section 180 of the Code is amended by inserting after subsection (3) the following subsection:

“(4) For the purpose of this section, a *prima facie* case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.”.

Amendment of section 256

23. 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 “by the courts in Peninsular Malaysia in national language and by the courts in Sabah and Sarawak in English language”; and

(ii) by substituting for the words “English language” the words “the national language or the English language, as the case may be,”.

New section 272B

24. 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) 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.

(3) The Court shall not give leave under subsection (1) or make an order under subsection (2) 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.

(4) 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.

(5) 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.

(6) 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

25. Paragraph 289(c) of the Code is amended by inserting after the word “age” the words “, except males sentenced to whipping under section 376, 377C, 377CA or 377E of the Penal Code”.

Amendment of section 291

26. Subsection 291(1) of the Code is amended by substituting for the word “twelve” the word “twenty-four”.

Amendment of section 293

27. Section 293 of the Code is amended—

(a) in subsection (1)—

- (i) by deleting the word “or” at the end of paragraph (c);
- (ii) in paragraph (d), by substituting for the words “Juvenile Courts Act 1947 [Act 90]” the words “Child Act 2001 [Act 611]; or ”; and
- (iii) by inserting after paragraph (d) the following paragraph:
 - “(e) (i) to make an order requiring the offender to perform community service, not exceeding 240 hours in aggregate, of such nature and at such time and place and subject to such conditions as may be specified by the Court;
 - (ii) in this paragraph, “community service” means any work, service or course of instruction for the betterment of the public at large

and includes, where any work performed involves payment to the prison or local authority; and

- (iii) the community service under this paragraph shall be under the Minister charged with the responsibility for women, family and community.”;

(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

28. 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

29. 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, 377CA or 377E of the Penal Code before any Court, whether or not he has previously been convicted of any offence, 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.”.

New section 295A

30. The Code is amended by inserting after section 295 the following section:

“Rehabilitative counseling

295A. (1) The Court may in addition to the order made under subsection 295(1A) order a period of rehabilitative counseling for the accused person within the period of his detention.

(2) The rehabilitative counseling shall be under the Minister charged with the responsibility for prisons.”

Deletion of section 298

31. The Code is amended by deleting section 298.

Amendment of section 307

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

Amendment of First Schedule

33. 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 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
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“CHAPTER VIA—OFFENCES RELATING TO TERRORISM

Suppression of Terrorist Acts and Support for Terrorist Acts

130c	Committing terrorist acts	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
130d	Providing devices to terrorist groups	do.	do.	do.	do.	Imprisonment for life, or 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>	7 <i>Maximum punishment under the Penal Code</i>
130E	Recruiting persons to be members of terrorist groups or to participate in terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine
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
130M	Intentional omission to give information relating to terrorist acts	do.	do.	do.	do.	Imprisonment for seven years, or fine, or both

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
<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 property	do.	do.	do.	do.	Imprisonment for twenty years; or fine, and forfeiture of certain property
130r	Intentional omission to give information about terrorist property	do.	do.	do.	do.	Imprisonment for seven years, or fine, or both
130s	Intentional omission to give information relating to terrorism financing offence	do.	do.	do.	do.	Imprisonment for seven years, or fine, or both”;

(c) in the item relating to section 160 of the Penal Code, in column 7, by substituting for the words “one month” and “two hundred” the words “six months” and “one thousand” respectively”;

(d) in the item relating to section 186 of the Penal Code, in column 7, by substituting for the words “three months” and “one thousand” the words “two years” and “ten thousand” respectively”;

- (e) in the item relating to section 225B of the Penal Code, in column 7, by substituting for the words “four hundred ringgit” the words “imprisonment for twelve months, or fine of two thousand ringgit, or both”;
- (f) in the item relating to section 304 of the Penal Code, in column 7, by substituting for the word “twenty” the word “thirty”;
- (g) in the item relating to section 364 of the Penal Code, in column 7, by substituting for the word “twenty” the word “thirty”;
- (h) 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>
<i>“Hostage-Taking</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”;

- (i) by substituting for the item relating to section 376 of the Penal Code the following items 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>
“375A	Husband causing hurt in order to have sexual intercourse	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for five years
376(1)	Rape	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for twenty years, and whipping

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(2)	Aggravated rape	do.	do.	do.	do.	Imprisonment for not less than five years and not more than thirty years, and whipping
376(3)	Incestuous rape	do.	do.	do.	do.	Imprisonment for not less than eight years and not more than thirty years, and whipping not less than ten strokes
376(4)	Causing death while committing or attempting to commit rape	do.	do.	do.	do.	Death or imprisonment for not less than fifteen years and not more than thirty years and whipping not less than ten strokes”;

(j) by inserting after the item relating to section 377C 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
“377CA	Sexual connection by object	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for twenty years, and whipping”;

(k) in the item relating to section 396 of the Penal Code, in column 7, by substituting for the word “twenty” the word “thirty”;

(l) in the item relating to section 406 of the Penal Code, in column 7, by substituting for the words “not less than one year and not more than ten years” the words “ten years”;

- (m) in the item relating to section 408 of the Penal Code, in column 7, by substituting for the words “ten years” the words “fourteen years”;
- (n) in the item relating to section 447 of the Penal Code, in column 7, by substituting for the words “three months” and “one thousand” the words “six months” and “three thousand” respectively;
- (o) in the item relating to section 448 of the Penal Code, in column 7, by substituting for the words “one year” and “two thousand” the words “three years” and “five thousand” respectively;
- (p) in the item relating to section 453 of the Penal Code, in column 7, by substituting for the words “two years” the words “three years”;
- (q) by deleting all items relating to section 454 of the Penal Code.”;
- (r) in the item relating to section 455 of the Penal Code, in column 7, by substituting for the words “ten years” the words “fourteen years”;
- (s) by deleting all items relating to section 456 of the Penal Code;
- (t) in the item relating to section 457 of the Penal Code, in column 1, by deleting the words “by night”;
- (u) by deleting all items relating to section 458 of the Penal Code; and
- (v) in the item relating to section 460 of the Penal Code, in column 1, by deleting the words “by night” and in column 7, by substituting for the word “twenty” the word “thirty”.

New Third Schedule

34. The Code is amended in the Schedules by inserting after the Second Schedule the following schedule:

“THIRD SCHEDULE
[Section 20A]

PROCEDURE ON BODY SEARCH

PART I

OBJECTIVE

Objective of search

1. (1) A body search may be conducted on a person arrested only if it complies with any of the following objectives:

- (a) to obtain incriminating evidence of the commission of the offence for which he has been arrested;
- (b) to seize contraband, the proceeds of crime, or other things criminally possessed or used in conjunction with the offence for which he has been arrested; or
- (c) for the discovery of evidence related to the reason of the arrest or to preserve the evidence or to prevent disposal of such evidence by the person arrested.

(2) For the purposes of this Schedule, “person arrested” means a person who is arrested or a person who is in lawful custody after his arrest.

PART II

TYPES AND CONDUCT OF BODY SEARCH

Types of body search

2. There shall be four types of body search—

- (a) pat down search;
- (b) strip search;
- (c) intimate search; and
- (d) intrusive search.

General conduct of officer during search

3. (1) An officer conducting a body search shall do so in a professional manner and have the highest regard for the dignity of the person arrested.

- (2) The officer shall comply strictly with the following procedure:
- (a) before any search is commenced, the officer shall introduce himself to the person arrested and shall be courteous, professional and shall not use unnecessary or demeaning language or remarks against the person arrested and shall cause minimal embarrassment to the person;
 - (b) the search shall not be more extensive than necessary to ascertain the existence of harmful or unlawful articles believed to be concealed on the person arrested;
 - (c) the officer conducting the search shall be of the same sex as the person arrested with strict regard to decency;
 - (d) where the gender of the person arrested is in doubt, his gender shall be determined by way of an interview or through his identification card or birth certificate before a search is conducted by an appropriate officer with strict regard to decency;
 - (e) for strip, intimate and intrusive search, a second officer who is of the same sex of the person arrested shall be present during the search;
 - (f) no officer shall disclose to the public any blemish, flaw or defect of body parts found on the body of the person arrested during the cause of the search;
 - (g) in the course of a search, the officer shall respect –
 - (i) the religious and cultural sensitivities; and
 - (ii) the physical, psychological, medical and mental characteristics,

of a person arrested. In cases involving the removal of a female's scarf or male headdress, religious and cultural sensitivity approach shall be adopted;
 - (h) when a person arrested is pregnant, elderly or a person with disabilities, the search shall be conducted in a proper manner taking into consideration the state of the person's medical and physical condition.

PART III

PAT DOWN SEARCH

Pat down search

4. (1) Pat down search means the act of searching the outer clothing of a person arrested which is to be conducted by quickly running the hands over the outer garments of the person arrested.

(2) Pat down search may be conducted when there is reasonable suspicion that a weapon, object, evidence or contraband is being concealed on a person arrested, and the search may be conducted in the following circumstances:

- (a) at the time of arrest, or
- (b) before the arrested person is put into custody in a lock-up or detention centre.

Authorization is not required to conduct pat down search

5. No authorization is required for an officer to conduct a pat down search.

Procedure on pat down search

6. Whenever any officer of any enforcement agency conferred with the power of arrest or search of a person under any law conducts a pat down search on a person arrested, the following procedure shall be complied with:

- (a) the officer shall first ask the person arrested to declare any item, object, evidence or contraband on his body or clothing that is harmful or unlawful;
- (b) the officer shall then ask the person arrested to remove any personal items from his pockets or other parts of his clothing, to turn pocket linings out and to place the personal items in a place where they can be seen by the officer;
- (c) the officer may ask the person arrested to remove from his body any jewellery, watch, footwear, sock, belt, headwear, beg, pouch and prosthetic device and place the items where they can be seen by the officer;
- (d) the officer may instruct the person arrested to face his back towards him with his arms raised in such position that his palms are resting on the head and the legs are spread wide enough to a reasonable distance for the search to be conducted;
- (e) if there is a wall or vehicle nearby, the person arrested may be asked to face or lean on the said wall or vehicle and the officer shall position himself slightly to one side at the rear of the person arrested;
- (f) the officer may either run his fingers through the person arrested's hair or squeeze it, without pulling the hair and he may also ask the person arrested to run his fingers vigorously through his own hair;
- (g) the officer may start off the pat down search beginning with one side of the person arrested and later proceeding to the centre back, and then the other side and upon completion of the back of the person arrested, the officer may instruct him to turn around and proceed to check the front of the person arrested in a similar manner;

- (h) the officer may proceed to search the person arrested in a manner from top to bottom, running the hand over the neck and collar, shoulder and down the arm to the hand, under the armpit and down the trunk of the body, checking the pockets, seams and hems and other recesses in the clothing and ending at the waistline and for female, the officer may pass the hand over and under the person arrested's breast;
- (i) the officer may instruct the person arrested to loosen his waistbands, if any, and check the bands or waistlines seams and belt loops, then the officer may run the hands around the person arrested's waist and proceed down the buttocks and legs and the officer may use both hands when searching the legs, paying particular attention to seams and cuffs;
- (j) the officer shall not pass the hands over the person arrested's genital area when searching the trunk and legs of the person arrested;
- (k) the search shall where ever possible be done out of the public view, and the officer shall—
 - (i) conduct the search having due regard to the security of the situation and evidence to be recovered and, as reasonably practical, cause minimal embarrassment and take reasonable care to protect the dignity of the person; and
 - (ii) prepare a list of all things seized in the course of the search and signed by the person arrested and he shall be given a copy thereof.
- (l) any pat down search conducted in a lock-up or a detention centre shall be recorded in a station diary or a proper book of record as the case may be.

PART IV

STRIP SEARCH

Strip search

7. (1) A strip search means a search involving the removal of some part of outer clothings or removal of all the person arrested's clothing and during the search, the person arrested may be allowed to remain partly clothed by allowing him to dress his upper body before removing items of clothing from his lower body.

(2) The strip search may only be conducted in the following circumstances:

- (a) an arrest has been made; and
- (b) when there is reasonable suspicion that the person is concealing an object, evidence, contraband or weapon on him.

(3) A strip search may be conducted before a person arrested is detained in a lock-up or a detention centre or may also be conducted whenever he re-enters the lock up or a detention centre where there is a reasonable suspicion that the person is concealing an object, evidence, contraband or weapon on him.

Authorization to conduct strip search

8. (1) A strip search shall not be conducted, without the prior approval of a police officer not below the rank of Inspector or in the case of any other enforcement agency, by an officer whose rank or authority is equivalent to the rank or authority of Inspector.

(2) The approval under subparagraph (1), if given orally shall be reduced in writing by the officer conducting a search, in the case of a police officer, into the station diary and in the case of any other enforcement agency, such approval shall be recorded in a proper book of record.

Procedure on strip search

9. Whenever any officer of any enforcement agency conferred with the power of arrest or search of a person under any law conducts a strip search on a person arrested, the following procedure shall be complied with:

- (a) the search shall be conducted in a private room out of the view of anyone outside the room and no recording or communicating devices shall be allowed in this room, including phones and cameras and only the officer conducting a search, the second officer and the person arrested shall be present in the room during the entire search;
- (b) the officer conducting a search shall first explain in a language that the person arrested understands that the person arrested shall be required to take off his clothes and to declare any item, object, evidence or contraband on his body or clothing that is harmful or unlawful;
- (c) the strip search does not require that the person arrested removes all his clothes at the same time;
- (d) the search shall be divided into the search of the upper torso, arms and head, and the search of the lower torso from the navel downwards and in conducting the search a male person shall be allowed to put on his shirt before removing his trousers and a female person shall be allowed to put on her blouse and upper garments before removing her pants or skirt;
- (e) all the removed clothes and personal items shall be thoroughly inspected, in the full view of the person arrested, to ensure that there are no incriminating weapons, objects, evidence or contraband concealed;
- (f) to check the person arrested's hair the officer conducting a search may comb through the person's hair and if the hair is dreadlocked or matted, the officer will have to use his fingers to squeeze the person's hair without pulling it;

- (g) to search the ears, the officer may—
 - (i) check the crevice behind the ears and have the person arrested lift his hair away from the neck; and
 - (ii) inspect the ear canals of the person by looking into the ear canal and for this purpose, a flashlight may be used;
- (h) in conducting a search of the nasal passage, the officer conducting a search may instruct the person arrested to tilt head back to observe and inspect the nasal canal and nostrils, and for this purpose, a flashlight may be used;
- (i) to search the mouth, the officer may—
 - (i) instruct the person arrested to roll back his tongue to observe under the tongue;
 - (ii) instruct the person arrested to stick his tongue out to observe the back of the throat;
 - (iii) instruct the person arrested to pull his upper and lower lip from the gums to inspect the gum lines; or
 - (iv) instruct the person arrested to remove his dentures or false plates, if any, for inspection;
- (j) for an inspection of the person's torso from the navel upwards, the person arrested is allowed to wear his lower garments and the officer may—
 - (i) instruct the person arrested to stand in a position with his arms raised and palms resting on the head;
 - (ii) conduct a visual inspection of the person arrested may be conducted either by asking the person to turn 360 degrees slowly, or the officer may walk around the person;
 - (iii) inspect both his armpits, entire torso and belly button and if the person arrested is obese, he may be instructed to lift any skin to inspect any crevice that may not be visible;
 - (iv) instruct a female person to lift and separate her breasts to inspect all sides;
 - (v) inspect the whole arm and all fingers.
- (k) for an inspection of the lower torso below the navel and the legs, the person arrested shall be allowed to wear his upper garments and the officer may—
 - (i) instruct the person arrested to remove all clothes covering the bottom half from the navel downwards;
 - (ii) conduct a visual inspection of the person arrested either by asking the person to turn 360 degrees slowly, or the officer may walk around the person;

- (l) the officer shall have minimal physical contact with the person arrested during the search involving his intimate parts of the body;
- (m) after the search is completed the person arrested shall be allowed to put on his clothes;
- (n) a list of all things seized in the course of the search shall be prepared by the officer conducting the search and signed by the person arrested and he shall be given a copy thereof.

PART V

INTIMATE SEARCH

Intimate search

10. (1) An intimate search means a search which consists of the physical examination of a person arrested's body orifices other than the mouth, nose and ears.

(2) The intimate search may only be conducted in the following circumstances:

- (a) an arrest has been made; and
- (b) the officer has a reasonable suspicion, whether or not the pat down search or strip search is conducted, that the person arrested is concealing a weapon, object, evidence or contraband in his body orifices.

Authorization to conduct intimate search

11. An intimate search shall not be conducted, without the prior approval of a police officer not below the rank of Assistant Superintendent of Police or in the case of any other enforcement agency, by the officer whose rank or authority is equivalent to the rank of Assistant Superintendent of Police.

Procedure on intimate search

12. Whenever any officer of any enforcement agency conferred with the power of arrest or search of a person under any law conducts an intimate search on a person arrested, the following procedure shall be complied with:

- (a) if necessary, the person arrested may be instructed to remove all clothes covering the bottom half, from the navel downwards;
- (b) if necessary, the person arrested may be instructed to squat over a mirror placed on the floor and made to cough deeply not more than ten times;
- (c) when nothing is recovered after the squat and coughing deeply until ten times the intimate search shall stop and the person arrested shall be allowed to put on his clothes;

- (d) where the officer considers that the person arrested is incapable of doing the squat due to the health, physical conditions or appears to be or claims to be pregnant, the squat shall not be performed;
- (e) the officer shall not attempt or conduct any external intervention in discharging the article from the body orifices of the person arrested;
- (f) the procedure on strip search as specified under subparagraphs 9(a), (b), (c), (d), (e), (f), (j), (k), (l), (m) and (n) shall apply for the purpose of intimate search.

PART VI

INTRUSIVE SEARCH

Intrusive search

13. (1) An intrusive search means a search involving the examination of a person arrested to determine the existence of any object, evidence, weapon or contraband inside the body or body orifices of the person and includes the removal of such object, evidence, weapon or contraband.

(2) The intrusive search shall only be conducted by a Government Medical Officer or a Medical Officer, or by any hospital assistant or a registered nurse acting under the Government Medical Officer or a Medical Officer's direction.

Authorization to conduct intrusive search

14. (1) An intrusive search shall not be conducted, without the prior approval of an Officer in charge of the Police District or in the case of any other enforcement agency, by the officer whose authority is equivalent to the authority of an Officer in charge of the Police District.

(2) The approval under subparagraph (1) shall be recorded in the station diary and in the case of other enforcement agencies, such approval shall be recorded in a proper book of record.

(3) A Government Medical Officer or a Medical Officer after being served with a copy of the request for an intrusive search containing particulars of the approval of the officer under subsection (1) shall, as soon as possible, conduct the intrusive search or direct any hospital assistant or a registered nurse to conduct the search.

Procedure on intrusive search

15. Whenever an intrusive search on a person arrested is conducted, the following procedure shall be complied with:

- (a) the person arrested may be taken to the nearest hospital as soon as practicable for the search to be conducted accompanied by an officer;

- (b) the accompanying officer, who is of the same sex as the person arrested, shall witness the search and shall take into custody of any weapon, object, evidence or contraband recovered pursuant to the search;
- (c) a list of all things seized in the course of the search shall be prepared by the officer conducting the search and signed by the person arrested and he shall be given a copy thereof.”.

