

A BILL

i n t i t u l e d

An Act to amend the Penal Code.

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ENACTED by the Parliament of Malaysia as follows:

Short title

1. This Act may be cited as the Penal Code (Amendment) Act 2013.

New sections 52A and 52B

2. The Penal Code [*Act 574*], which is referred to as the “Code” in this Act, is amended by inserting after section 52 the following sections:

‘ **“Non-serious offence”**

52A. The words “non-serious offence” denote an offence punishable with imprisonment for a term of not more than ten years.

“Serious offence”

52B. The words “serious offence” denote an offence punishable with imprisonment for a term of ten years or more.’.

New section 75A

3. The Code is amended by inserting after section 75 the following section:

“Punishment of mandatory imprisonment for persons convicted of multiple serious offences

75A. Whoever, having been convicted at least two times of a serious offence and was punished with at least two years of imprisonment for each of those convictions, shall be punished with mandatory imprisonment for the third and subsequent offences and the term of imprisonment shall not be less than double the term of the longer term of imprisonment imposed for the previous convictions.”.

Amendment of section 107

4. The Code is amended in section 107 by inserting after Explanation 2 the following explanation and illustration:

“Explanation 3 - Whoever masterminds the doing of an act is said to command the doing of that act.

ILLUSTRATION

A, the head of an organized criminal group B, masterminds C and D to kidnap E. A is guilty of abetment.”.

New section 121E

5. The Code is amended by inserting after section 121D the following section:

“Destruction, etc. of national emblem

121E. (1) Whoever mutilates, defaces, physically defiles, burns, maintains on the floor or ground, tramples on, desecrates, destroys, insults or questions with the intention of dishonouring any national emblem or flag of a foreign nation shall be punished with imprisonment for a term of not less than five years and not more than fifteen years, and shall also be liable to fine.

(2) Whoever uses, recognizes or promotes the use of any flag that purports to represent Malaysia other than the flag specified as the Malaysian flag under the Schedule to the Emblems and Names (Prevention of Improper Use) Act 1963 [Act 414], or any State in Malaysia other than the flag provided for under the relevant legislation of each State, shall be punished with imprisonment for a term of not less than five years and not more than fifteen years, and shall also be liable to fine.

(3) For the purpose of this section, “national emblem” has the meaning assigned under the National Emblems (Control of Display) Act 1949 [Act 193].”.

New section 130QA

6. The Code is amended by inserting after section 130Q the following section:

“Accepting gratification to facilitate or enable terrorist acts

130QA. Whoever accepts gratification to facilitate or enable the commission of any terrorist act shall be punished—

(a) if the act results in death, with death; and

(b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.”.

Amendment of section 130U

7. The Code is amended in section 130U by deleting the definition of “serious offence”.

Amendment of section 130v

8. The Code is amended in section 130v—

(a) by renumbering the existing section as subsection (1);

- (b) in subsection (1), by substituting for the words “which may extend to five years” the words “of not less than five years and not more than twenty years”; and
- (c) by inserting after the renumbered subsection (1) the following subsection:

“(2) Until the contrary is proved, a person shall be presumed to be a member of an organized criminal group where—

- (a) such person can be identified as belonging to an organized criminal group; or
- (b) such person is found with a scheduled weapon as specified under the Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357].”.

New sections 130x, 130y, 130z, 130ZA, 130ZB and 130ZC

9. The Code is amended by inserting after section 130w the following sections:

“Harbouring member of an organized criminal group

130x. Whoever harbours, or prevents, hinders or interferes with the arrest of a member of an organized criminal group shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Consorting with an organized criminal group

130y. Whoever without reasonable excuse, consorts with a member of an organized criminal group shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to fine.

Recruiting persons to be members of an organized criminal group

130z. Whoever knowingly recruits, or agrees to recruit, another person to be a member of an organized criminal group shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Participation in an organized criminal group

130ZA. Whoever participates in an organized criminal group—

- (a) knowing or having reason to believe that it is an organized criminal group; and
- (b) knowing, or having reason to believe that, or being reckless as to whether, his participation in that group contributes to the occurrence of any criminal activity,

shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Accepting gratification to facilitate or enable organized criminal activity

130ZB. Whoever accepts gratification to facilitate or enable any organized criminal activity shall be punished—

- (a) if the act results in death, with death; and
- (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.

Enhanced penalties for offences committed by an organized criminal group or member of an organized criminal group

130zc. (1) Any organized criminal group or a member of an organized criminal group convicted of any serious offence under this Code or under any written law shall be punished with imprisonment for a term of twice as long as the maximum term for which he would have been liable on conviction for that offence, and shall also be liable to whipping.

(2) Any organized criminal group or a member of an organized criminal group convicted of any non-serious offence under this Code or under any written law shall be punished with imprisonment for a term of not less than two years and not more than twice as long as the maximum term for which he would have been liable on conviction for that offence, and shall also be liable to whipping.”.

Amendment of section 176

10. The Code is amended in section 176 by inserting after the words “may extend to two thousand ringgit or with both” the words “and in relation to offences under Chapter VIB, with imprisonment for a term which may extend to seven years, or with fine, or with both”.

New section 203A

11. The Code is amended by inserting after section 203 the following section:

“Disclosure of information

203A. (1) Whoever discloses any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under any written law shall be punished with fine of not more than one million ringgit, or with imprisonment for a term which may extend to one year, or with both.

(2) Whoever has any information or matter which to his knowledge has been disclosed in contravention of subsection (1) who discloses that information or matter to any other person shall be punished with fine of not more than one million ringgit, or with imprisonment for a term which may extend to one year, or with both.”.

Amendment of section 223

12. The Code is amended in section 223—

(a) in the shoulder note, by inserting after the word “servant” the words “and facilitating or enabling any terrorist act, *etc.*”;

(b) by renumbering the existing section as subsection (1);
and

(c) by inserting after the renumbered subsection (1) the following subsection:

“(2) Whoever commits an offence under subsection (1) to facilitate or enable any terrorist act or organized criminal activity shall be punished with imprisonment for a term of twice as long as the maximum term for which he would have been liable on conviction for that offence, and shall also be liable to whipping.”.

Amendment of section 320

13. The Code is amended in paragraph 320(*h*), by substituting for the words “twenty days” the words “ten days”.

Amendment of section 322

14. The Code is amended in section 322 in the illustration, by substituting for the words “twenty days” the words “ten days”.

Amendment of section 324

15. The Code is amended in section 324—

(a) by inserting after the words “cause death,” the words “or any scheduled weapon as specified under the Corrosive and Explosive Substances and Offensive Weapons Act 1958,”; and

(b) by substituting for the words “three years” the words “ten years”.

Amendment of section 326

16. The Code is amended in section 326 by inserting after the words “cause death,” the words “or any scheduled weapon as specified under the Corrosive and Explosive Substances and Offensive Weapons Act 1958,”.

New section 326A

17. The Code is amended by inserting after section 326 the following section:

“Punishment for causing hurt by spouse

326A. Whoever, during the subsistence of a valid marriage, causes hurt to his spouse and commits an offence under section 323, 324, 325, 326, 334 or 335 shall be punished with imprisonment for a term of twice as long as the maximum term for which he would have been liable on conviction for that offence under the relevant section.”.

New section 352A

18. The Code is amended by inserting after section 352 the following section:

“Punishment for using criminal force by spouse

352A. Whoever, during the subsistence of a valid marriage, assaults or uses criminal force on his spouse shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand ringgit, or with both.”.

New section 375B

19. The Code is amended by inserting after section 375A the following section:

“Gang rape

375B. Whoever commits gang rape shall be punished with imprisonment for a term of not less than ten years and not more than thirty years.

Explanation – Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this section.”.

Amendment of section 376

20. The Code is amended in subsection 376(2)—

- (a) by deleting the word “or” at the end of paragraph (f);
- (b) by substituting for the comma at the end of paragraph (g) a semi colon;
- (c) by inserting after paragraph (g) the following paragraphs:
 - “(h) when by reason or on occasion of the rape, the woman becomes insane;
 - (i) when he knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is or may be transmitted to the woman;
 - (j) when by reason or on occasion of the rape, the woman commits suicide; or
 - (k) when he knew of the mental disability, emotional disorder or physical handicap of the woman at the time of the commission of the crime,”; and
- (d) by substituting for the words “five years” the words “ten years”.

Amendment of section 376B

21. The Code is amended in subsection 376B(1) by substituting for the words “not less than six years and not more than twenty years” the words “not less than ten years and not more than thirty years”.

Amendment of section 377CA

22. The Code is amended in section 377CA by substituting for the words “which may extend to twenty years” the words “of not less than five years and not more than thirty years”.

Amendment of section 377E

23. The Code is amended in section 377E by substituting for the words “which may extend to five years” the words “of not less than three years and not more than fifteen years”.

New section 411A

24. The Code is amended by inserting after section 411 the following section:

“Receiving benefit derived from criminal activities of organized criminal group

411A. (1) Whoever receives from an organized criminal group a benefit that is derived from the criminal activities of the organized criminal group shall be punished with imprisonment for a term which may extend to six years if the person—

- (a) knows that it is an organized criminal group; and
- (b) knows or is reckless as to whether the benefit is derived from criminal activities of the organized criminal group.

(2) For the purpose of this section, a benefit derived from the criminal activities of an organized criminal group is a benefit derived or realized or substantially derived or realized directly or indirectly from criminal activities of an organized criminal group.”.

Amendment of section 426

25. The Code is amended in section 426 by substituting for the words “three months” the words “five years”.

Amendment of section 427

26. The Code is amended in section 427 by substituting for the words “which may extend to two years” the words “of not less than one year and not more than five years”.

Amendment of section 428

27. The Code is amended in section 428—

- (a) by deleting the words “of the value of five ringgit or upwards”; and
- (b) by substituting for the words “two years” the words “three years”.

Deletion of section 429

28. The Code is amended by deleting section 429.

Amendment of section 430

29. The Code is amended in section 430 by substituting for the words “which may extend to five years” the words “of not less than five years and not more than thirty years”.

Amendment of section 430A

30. The Code is amended in section 430A—

- (a) in the shoulder note, by substituting for the words “railway engine, train, *etc.*” the words “any public transportation”;
- (b) by substituting for the word “or” appearing before the word “truck” a comma; and
- (c) by inserting after the word “truck” the words “or any form of public transportation”.

Amendment of section 435

31. The Code is amended in section 435 by substituting for the words “seven years” the words “fourteen years”.

Amendment of section 436

32. The Code is amended in section 436 by inserting after the words “custody of property” the words “or any government facility”.

New section 440A

33. The Code is amended by inserting after section 440 the following section:

“Vandalism

440A. Whoever without the written authority of the Government or of any statutory body in the case of public property, or without the written consent of the owner or occupier in the case of private property—

- (a) writes, draws, sprays, paints, marks, scribbles, scratches or inscribes on any public property or private property any word, slogan, caricature, drawing, mark, symbol or other thing;
- (b) affixes, posts-up, exhibits or displays on any public property or private property any poster, placard, advertisement, bill, notice, paper or other document; or
- (c) hangs, fastens, suspends, hoists, affixes, exhibits or displays on or from any public property or private property any flag, bunting, standard, banner or the like with any word, slogan, caricature, drawing, mark, symbol or other thing,

commits “vandalism” and shall be punished with imprisonment for a term which may extend to three years.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Penal Code (“Act 574”). The Bill seeks to enhance the Penal Code with new offences targeted at organized criminal groups. A parallel amendment is also made to the Security Offences (Special Measures) Act 2012 [Act 747] to include Chapter VI_B of Act 574 relating to organized crime as a security offence. Chapters VI and VI_A of Act 574 are also amended

to include new offences. The amendment also takes into account sexual offences and acts of violence by spouse. Other amendments relate to penalties relating to the offences under mischief and a new offence of vandalism.

2. *Clause 1* seeks to provide for the short title of the proposed Act.

3. *Clause 2* seeks to introduce new sections 52A and 52B into Act 574. Section 52A defines the expression “non-serious offence” to mean an offence punishable with imprisonment for a term of not more than ten years while section 52B transposes the existing definition of “serious offence” from section 130U of Act 574.

4. *Clause 3* seeks to introduce a new section 75A into Act 574 to provide for mandatory imprisonment of not less than double the longer term imposed previously for a repeat offender of serious offences.

5. *Clause 4* seeks to amend section 107 of Act 574 to insert a new explanation and illustration relating to a person who masterminds an offence.

6. *Clause 5* seeks to introduce a new section 121E into Chapter VI of Act 574 to provide for a specific offence relating to the improper use of national emblems and flags of foreign nations.

7. *Clause 6* seeks to introduce a new section 130QA into Chapter VIA of Act 574 to provide for a new offence of accepting gratification to facilitate or enable terrorist acts.

8. *Clause 8* seeks to amend section 130v of Act 574 by increasing the punishment from a maximum of five years imprisonment to twenty years imprisonment and introducing a presumption in relation to that section.

9. *Clause 9* seeks to introduce new sections 130x, 130y, 130z, 130ZA, 130ZB and 130ZC into Chapter VIB of Act 574 to criminalize ancillary offences such as harbouring, consorting, recruiting or participating in organized criminal groups as well as accepting gratification to facilitate or enable organized criminal activity.

10. *Clause 10* seeks to amend section 176 of Act 574 to increase the penalty if it is in relation to offences under Chapter VIB to imprisonment for a term which may extend to seven years or fine or both.

11. *Clause 11* seeks to introduce a new section 203A into Act 574 providing for a new offence of disclosure of information which carries a penalty of fine of not more than one million ringgit or imprisonment for a term which may extend to one year or both.

12. *Clause 12* seeks to amend section 223 of Act 574 to provide for a double penalty if the offence is committed to facilitate or enable any terrorist act or organized criminal activity.

13. *Clause 13* seeks to amend paragraph 320(h) of Act 574 to reduce the specified twenty days threshold to determine grievous hurt to ten days.

14. *Clauses 15 and 16* seek to amend sections 324 and 326 of Act 574 respectively to include hurt caused by the use of scheduled weapons as specified under the Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357] as offences under those sections and to increase the penalty under section 324 from three years to ten years.

15. *Clause 17* seeks to introduce a new section 326A into Act 574 providing for punishment for causing hurt by spouse while *clause 18* seeks to introduce a new section 352A into Act 574 providing for punishment for using criminal force by spouse.

16. *Clause 19* seeks to introduce a new section 375B into Act 574 providing for a new offence of gang rape which carries a sentence of imprisonment of not less than ten years and not more than thirty years.

17. *Clause 20* seeks to amend subsection 376(2) of Act 574 by inserting new aggravating circumstances in relation to the punishment for rape and also by increasing the minimum sentence from five years to ten years.

18. *Clause 21* seeks to amend section 376B of Act 574 to increase the punishment for incest from a term of imprisonment of not less than six years and not more than twenty years to not less than ten years and not more than thirty years.

19. *Clause 22* seeks to amend section 377CA of Act 574 to increase the punishment for rape by using any object from a term of imprisonment which may extend to twenty years to not less than five years and not more than thirty years.

20. *Clause 23* seeks to amend section 377E of Act 574 to increase the punishment for inciting a child to an act of gross indecency from a term of imprisonment which may extend to five years to not less than three years and not more than fifteen years.

21. *Clause 24* seeks to introduce a new section 411A into Act 574 providing for a new offence of receiving benefit derived from the criminal activities of organized criminal groups which carries a penalty of imprisonment for a term which may extend to six years.

22. *Clauses 25, 26, 27, 29 and 31* seek to amend sections 426, 427, 428, 430 and 435 of Act 574 respectively to increase the penalty for mischief. *Clause 28* seeks to delete section 429. *Clauses 30 and 32* seek to amend sections 430A and 436 respectively to enlarge the scope of the two sections to deal with public transportation and government facilities generally.

23. *Clause 33* seeks to introduce a new section 440A into Act 574 providing for a new offence of vandalism which carries a penalty of imprisonment for a term which may extend to three years.

24. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

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

[PN(U2)2903B/K]