



LAWS OF MALAYSIA

Act A1521

CRIMINAL PROCEDURE CODE (AMENDMENT) ACT 2016

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LAWS OF MALAYSIA

Act A1521

CRIMINAL PROCEDURE CODE (AMENDMENT) ACT 2016

An Act to amend the Criminal Procedure Code and the Criminal Procedure Code (Amendment) (No. 2) Act 2012.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Criminal Procedure Code (Amendment) Act 2016.

(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.

PART II

AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

Amendment of section 2

2. The Criminal Procedure Code [Act 593], which is referred to as the “Code” in this Part, is amended in section 2 by inserting after subsection (4) the following subsection:

“(5) Notwithstanding the definition of “seizable offence” in subsection (1), an offence under the Penal Code is a seizable offence if it is expressly provided in any written law that the offence is a seizable offence.”.

Amendment of section 13

3. Subsection 13(1) of the Code is amended by substituting for paragraph (a) the following paragraph:

“(a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code or any other written law; or”.

Amendment of section 98

4. Section 98 of the Code is amended by inserting after subsection (5) the following subsection:

“(6) The Public Prosecutor may appear in any application made under this section.”.

Amendment of section 117

5. Section 117 of the Code is amended by inserting after subsection (1) the following subsection:

“(1A) The Public Prosecutor may appear in any application made under this section.”.

Amendment of section 173A

6. Section 173A of the Code is amended by inserting after subsection (7) the following subsection:

“(8) This section shall not apply—

(a) if the offender is charged with a serious offence;
or

- (b) if the offender is charged with the commission of an act of domestic violence as defined under section 2 of the Domestic Violence Act 1994 [Act 521].”.

New sections 265A, 265B and 265C

7. The Code is amended by inserting after section 265 the following sections:

“Special provisions relating to protected witness

265A. (1) Notwithstanding section 264, where at any time during any trial, any of the witnesses for the prosecution refuses to have his identity disclosed and wishes to give evidence in such a manner that he would not be seen or heard by both the accused and his counsel, the Public Prosecutor may make an oral application to the Court for the procedures in this section to apply.

(2) For the purpose of satisfying itself as to the need to protect the identity of the witness, the Court shall hold an inquiry *in camera* by questioning the witnesses concerned or any other witness in the absence of the accused and his counsel.

(3) If after such inquiry the Court is satisfied as to the need to protect the identity of the witness, the evidence of such witness shall be given in such a manner that the witness would not be visible to the accused and his counsel and further if the witness fears that his voice may be recognized, his evidence shall be given in such manner that he would not be heard by the accused and his counsel.

(4) The evidence given by the witness under subsection (3) shall be given to the accused and his counsel provided that the Court shall cause the evidence leading to the identity of the witness to be concealed.

(5) The Court shall disallow any question by the accused or his counsel to any other witness that would lead to the identification of the witness who has given his evidence under this section.

(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 and his counsel.

(7) The Court shall seal all records that may lead to the identification of the witness who has given evidence under this section.

Identification by witness where evidence is taken *in camera*

265B. If in the course of taking evidence under section 265A the accused or any other person is required to be identified by the witness who gives evidence in the manner provided in that section, such identification may be made by the witness through an interpreter or other officer of the Court.

Protection of identity of witness

265c. Notwithstanding any written law to the contrary, any report through any means on a protected witness shall not reveal or contain—

- (a) the name;
- (b) the address;
- (c) the picture of the protected witness or any other person, place or thing which may lead to the identification of the protected witness; or
- (d) any evidence or any other thing likely to lead to the identification of the protected witness.”.

Amendment of section 294

8. Section 294 of the Code is amended by inserting after subsection (5) the following subsection:

“(6) This section shall not apply—

- (a) if the offender is charged with a serious offence;
- or

- (b) if the offender is charged with the commission of an act of domestic violence as defined under section 2 of the Domestic Violence Act 1994.”.

New section 399B

9. The Code is amended by inserting after section 399A the following section:

“Evidence or report by an expert on matters relating to organized criminal group

399B. (1) Notwithstanding any other written law, where evidence or report is given by an expert on the activities, structure, ritual, ceremonies, hand sign, insignia, characteristic of an organized criminal group or any other matters relating to an organized criminal group the Court shall admit the evidence as *prima facie* proof of the facts.

(2) If evidence is proved that the accused—

- (a) is involved in any of the activities, ritual or ceremonies of an organized criminal group;
- (b) is part of, or within the structure of an organized criminal group;
- (c) exhibits any hand sign, insignia or characteristics of an organized criminal group; or
- (d) can be linked to any other matters relating to an organized criminal group,

the Court shall presume that the accused is a member of an organized criminal group.”.

Amendment of section 402B

10. Subsection 402B(1) of the Code is amended by deleting the words “with the consent of the parties to the proceedings and”.

New section 407B

11. The Code is amended by inserting after section 407A the following section:

“Penalty if property has been disposed or concealed

407B. Where an offence is proved against an accused and the property which is the subject matter of an offence has been disposed of or concealed by the accused or any person on his behalf, the Court shall order the accused to pay as a penalty a sum of which is equivalent to, in the opinion of the Court, the value of the property, and any such penalty shall be recoverable as a fine.”.

Amendment of section 414

12. Section 414 of the Code is amended—

- (a) in subsection (1), by substituting for the words “Chief Police Officer” the words “Officer in charge of a Police District”; and
- (b) in subsection (2), by substituting for the words “Government of the State in which that property was seized” the words “Federal Government”.

Substitution of section 415

13. The Code is amended by substituting for section 415 the following section:

“Procedure where property is perishable or of small value

415. (1) Any property detained in police custody on the order of a Magistrate made under subsection 413(3) may be sold by public auction or in such manner as may be practicable if—

- (a) it is subject to speedy decay or deterioration;
- (b) it cannot be maintained without difficulty, or it is not practicable to maintain;

- (c) in the opinion of the police officer that the value of such property is less than ten thousand ringgit; or
- (d) its custody involves unreasonable expense and inconvenience.

(2) The proceeds of the sale shall be then passed to and become vested in the Federal Government after deducting the cost and expenses of the maintenance and sale of the property.”.

New section 425A

14. The Code is amended by inserting after section 425 the following section:

“Trial in absence of an accused

425A. (1) Notwithstanding any other provision of this Code, if an accused after being charged absconds before or during the course of his trial, the accused shall be deemed to have waived his right to be present at the trial.

(2) A Court may proceed or continue with the trial and pronounce judgment in the absence of the accused provided that the Court shall not pass any of the following sentences in the absence of the accused:

- (a) death;
- (b) imprisonment for life; and
- (c) imprisonment for natural life.

(3) If a warrant of arrest has been issued—

- (a) the Court may adjourn the trial and await the appearance of the accused or await the execution of the warrant; or
- (b) if the Court is satisfied that it is no longer in the interest of justice to await the appearance of the accused or to await the execution of the warrant, the Court may, at any time, proceed or continue with the trial.

(4) If the Court proceeds or continues with the trial pursuant to subsection (2), the Court may draw an inference adverse to the accused from the fact that he has absconded.

(5) If an accused reappears at his trial, he is not entitled to have any part of the proceedings that was conducted in his absence reopened unless the Court is satisfied that because of exceptional circumstances it is in the interest of justice to reopen the proceedings.

(6) Where an accused has absconded and the Court proceeds or continues with his trial, counsel for the accused may continue to act for the accused in the trial.

(7) For the purpose of this section, "judgment" includes conviction, acquittal and sentence."

Amendment of section 430

15. Section 430 of the Code is amended by substituting for the words "not exceeding one hundred ringgit" the words "not less than one thousand ringgit and not more than ten thousand ringgit".

Amendment of First Schedule

16. The First Schedule to the Code is amended—

(a) by inserting after the item relating to section 124 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	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
"124B	Activity detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to twenty years

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant	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
124c	Attempt to commit activity detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to fifteen years
124D	Printing, sale, <i>etc.</i> , of documents and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to fifteen years
124E	Possession of documents and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to ten years
124F	Importation of document and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to five years
124G	Posting of placards, <i>etc.</i>	do.	do.	do.	do.	Imprisonment which may extend to five years
124H	Dissemination of information	do.	do.	do.	do.	Imprisonment which may extend to five years
124I	Dissemination of false reports	do.	do.	do.	do.	Imprisonment which may extend to five years
124J	Receipt of document and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to ten years

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant	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
124K	Sabotage	do.	do.	do.	do.	Imprisonment for life
124L	Attempt to commit sabotage	do.	do.	do.	do.	Imprisonment which may extend to fifteen years
124M	Espionage	do.	do.	do.	do.	Imprisonment for life
124N	Attempt to commit espionage	do.	do.	do.	do.	Imprisonment which may extend to fifteen years”;

(b) by inserting after the item relating to section 130F 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
“130FA	Receiving training and instruction from terrorist groups and persons committing terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine
130FB	Attendance at place used for terrorist training	do.	do.	do.	do.	Imprisonment for ten years, or with fine”;

(c) by inserting after the item relating to section 130J 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
"130JA	Travelling to, through or from Malaysia for the commission of terrorist acts in foreign country	do.	do.	do.	do.	Imprisonment for thirty years, and fine
130JB	Possession, <i>etc.</i> , of items associated with terrorist groups or terrorist acts	do.	do.	do.	do.	Imprisonment for seven years, and fine, and forfeiture of certain property
130JC	Offence to build, <i>etc.</i> , conveyance for use in terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine, and forfeiture of conveyance
130JD	Preparation of terrorist acts	do.	do.	do.	do.	Imprisonment for seven years, and fine";

(d) by inserting after the item relating to section 130K 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
"130KA	Member of a terrorist group	do.	do.	do.	do.	Imprisonment which may extend to imprisonment for life, and fine";

(e) by inserting after the item relating to section 130q 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
"130QA	Accepting gratification to facilitate or enable terrorist acts	do.	do.	do.	do.	If the act results in death, with death, in any other case, imprisonment for not less than seven years but not exceeding thirty years, and fine";

(f) by inserting after the item relating to section 130s 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
130v	Member of an organized criminal group	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for not less than five years and not more than twenty years
130w	Assisting in an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to ten years

"CHAPTER VI B – ORGANIZED CRIME

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
130x	Harbouring a member of an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to five years, and fine
130y	Consorting with an organized criminal group	do.	do.	do.	do.	Imprisonment for not less than five years and not more than twenty years
130z	Recruiting persons to be members of an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to ten years, and fine
130zA	Participation in an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to ten years, and fine
130zB	Accepting gratification to facilitate or enable organized criminal activity	do.	do.	do.	do.	If the act results in death, with death, in any other case, with imprisonment not less than seven years but not exceeding thirty years, and fine";

(g) by inserting after the item relating to section 176 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
"176	If the notice of information required respects the commission of offences under Chapter VIb	do.	do.	do.	do.	Imprisonment for seven years, or fine, or both";

(h) by inserting after the item relating to section 203 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
"203A	Disclosure of information	do.	do.	do.	do.	Fine not more than one million ringgit, or imprisonment which may extend to one year, or both";

(i) in the item relating to section 324 of the Penal Code—

- (i) in column 4, by substituting for the word "do." the word "Warrant";
- (ii) in column 5, by substituting for the word "do." the words "Not bailable"; and
- (iii) in column 7, by substituting for the word "three" the word "ten";

(j) in the item relating to section 325 of the Penal Code—

(i) in column 4, by substituting for the word “do.” the word “Summons”; and

(ii) in column 5, by substituting for the word “do.” the word “Bailable”;

(k) in the item relating to section 326 of the Penal Code, in column 4, by substituting for the word “do.” the word “Warrant”;

(l) by inserting after the item relating to section 326 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
“326A	Causing hurt by spouse	do.	do.	do.	do.	Imprisonment for a term twice as long as the maximum term for which he would have been liable on conviction for that offence under the relevant section”;

(m) by inserting after the item relating to section 352 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
"352A	Using criminal force by spouse	do.	do.	do.	do.	Imprisonment which may extend to six months, or fine which may extend to two thousand ringgit, or both";

(n) by inserting after the item relating to section 375A 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
"375B	Gang rape	do.	do.	do.	do.	Imprisonment for not less than ten years, and not more than thirty years";

(o) in the item relating to subsection 376(2) of the Penal Code, in column 7, by substituting for the word "five" the word "ten";

(p) in the item relating to section 376B of the Penal Code, in column 7, 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";

- (q) in the item relating to section 377CA of the Penal Code, in column 7, by substituting for the words “twenty years” the words “not less than five years and not more than thirty years”;
- (r) in the item relating to section 377E of the Penal Code, in column 7, by substituting for the words “five years” the words “not less than three years and not more than fifteen years”;
- (s) by inserting after the item relating to section 411 of the Penal Code, the following items under the respective columns:

1	2	3	4	5	6	7
Penal Code Section	Offence	Whether the police may ordinarily arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not	Maximum punishment under the Penal Code
“411A	Receiving benefit derived from criminal activities of organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to six years”;

(t) in the item relating to subsection 426 of the Penal Code—

- (i) in column 3, by substituting for the words “Shall not arrest without warrant” the words “May arrest without warrant”;
- (ii) in column 4, by substituting for the word “Summons” the word “Warrant”;
- (iii) in column 5, by substituting for the word “Bailable” the words “Not bailable”; and
- (iv) in column 7, by substituting for the words “three months” the words “five years”;

- (u) in the item relating to section 427 of the Penal Code—
- (i) in column 3, by substituting for the words “Shall not arrest without warrant” the words “May arrest without warrant”;
 - (ii) in column 5, by substituting for the word “Bailable” the words “Not bailable”; and
 - (iii) in column 7, by substituting for the words “two years” the words “not less than one year and not more than five years”;
- (v) in the item relating to section 428 of the Penal Code—
- (i) in column 3, by substituting for the words “May arrest without warrant” the word “do.”;
 - (ii) in column 5, by substituting for the word “do.” the word “Bailable”; and
 - (iii) in column 7, by substituting for the word “do.” the words “Imprisonment which may extend to three years, or with fine, or both”;
- (w) by deleting the items relating to section 429 of the Penal Code;
- (x) in the item relating to section 430 of the Penal Code—
- (i) in column 5, by substituting for the word “do.” the words “Not bailable”; and
 - (ii) in column 7, by substituting for the word “do.” the words “Imprisonment for not less than five years and not more than thirty years”;
- (y) in the item relating to section 430A of the Penal Code, in column 5, by substituting for the word “do.” the word “Bailable”; and
- (z) in the item relating to section 435 of the Penal Code, in column 7, by substituting for the word “seven” the word “fourteen”.

PART III

AMENDMENTS TO THE CRIMINAL PROCEDURE CODE
(AMENDMENT) (NO. 2) ACT 2012

Substitution of section 7

17. The Criminal Procedure Code (Amendment) (No. 2) Act 2012 [Act A1431], which is referred to as the “principal Act” in this Part, is amended by substituting for section 7 the following section:

“New section 388A

7. The Code is amended by inserting after section 388 the following section:

“Electronic monitoring requirement for person released on bail

388A. (1) Where a Court has decided to release a person on bail under section 387 or 388, the Court may, on its own discretion, order for an electronic monitoring device to be attached to the person.

(2) The Court may, with due regard to the nature of the offence and the circumstances of the case as being sufficient to secure the person’s attendance at his trial, order for an electronic monitoring device to be attached to the person in lieu of the execution of a bond.

(3) The Court shall, before ordering a person to be attached with an electronic monitoring device under subsection (1), give the person and the Public Prosecutor an opportunity to be heard.

(4) The Court shall not make an order for a person to be attached with an electronic monitoring device under subsection (1) if there is a person (other than the person to be monitored) without whose co-operation it will not be practicable to secure the monitoring.

(5) Notwithstanding subsection (1), the Public Prosecutor may apply to the Court for any person to be so released on bail to be attached with an electronic monitoring device.

(6) Where the Public Prosecutor has made an application under subsection (5), the Court shall, with due regard to the nature of the offence and the circumstances of the case, order for the person to be so attached with an electronic monitoring device in lieu of the execution of a bond.

(7) Any person ordered to be attached with an electronic monitoring device under subsection (6) shall sign Form 55 of the Second Schedule and deposit the Form with the Court.”.

Amendment of section 8

18. Section 8 of the principal Act is amended by substituting for the new section 390A the following section:

“Electronic monitoring requirement to be explained

390A. (1) A Court shall, before making an order for compliance with an electronic monitoring requirement, explain to the person to be so ordered—

- (a) the terms and conditions as stated in Form 55 of the Second Schedule;
- (b) the consequences which may follow any failure by the person to comply with the electronic monitoring requirement; and
- (c) any other conditions as may be imposed by the Court which includes the payment for the maintenance of the device and the time period for the person to be monitored electronically.

(2) A Court shall revoke the bail of any person who willfully fails to comply with the electronic monitoring requirement under subsection (1).”.

New section 10

19. The principal Act is amended by inserting after section 9 the following section:

“Amendment of Second Schedule

10. The Second Schedule to the Code is amended by inserting after Form 54 the following Form:

“FORM 55

[Section 388A]

ELECTRONIC MONITORING DEVICE

IN THE ... COURT AT IN THE STATE OF

1. Name:
2. Case No.:
3. Identity Card No.:
4. Address:
5. Telephone No.:
6. Family members to be contacted:
-
7. Period to be attached with electronic monitoring device (“device”):
8. Terms and conditions:
 - (a) to report to the nearest police station at/for every
 - (b) understands that all movements will be tracked and retained as an official record;
 - (c) agrees to be required to report for device equipment checks if necessary;
 - (d) to notify the police officer if there is any change of address;
 - (e) to allow inspections of the device by the police officer;
 - (f) to report to the nearest police station for removal of the device;
 - (g) to return all the device equipment to the police officer;
 - (h) to submit to procedures required by the police officer;
 - (i) to maintain the device as instructed by the police officer;

- (j) to comply with any directions of the police officer;
- (k) to comply with any other conditions as the court may determine.

9. Failure to comply with the terms and conditions is an offence under the Penal Code.

I hereby agree to and shall comply with the terms and conditions as stated in this Form.

.....
(.....)”.