



LAWS OF MALAYSIA

Act 792

**SEXUAL OFFENCES AGAINST CHILDREN
ACT 2017**

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SEXUAL OFFENCES AGAINST CHILDREN ACT 2017

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LAWS OF MALAYSIA

Act 792

SEXUAL OFFENCES AGAINST CHILDREN ACT 2017

An Act to provide for certain sexual offences against children and their punishment in addition to other sexual offences against children and their punishment in other written laws, and in relation to it to provide for the administration of justice for children and connected matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Sexual Offences against Children Act 2017.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Application

2. (1) This Act shall apply to a child who is under the age of eighteen years and where this Act relates to any other written law, to a child of such age as specified in such written law.

(2) Any reference to a child in respect of any offence under this Act, or any offence specified in the Schedule where the victim is a child shall include a person whom an accused believes is a person of or under the age as specified in the respective provisions of such offences.

Extra-territorial application

3. If any offence under this Act, or any offence specified in the Schedule where the victim is a child is committed by a Malaysian citizen against any child in any place outside Malaysia, he may be dealt with in respect of such offence as if the offence was committed at any place within Malaysia.

PART II

OFFENCES RELATING TO CHILD PORNOGRAPHY

Child pornography

4. In this Act—

(a) “child pornography” means any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means—

- (i) of a child engaged in sexually explicit conduct;
- (ii) of a person appearing to be a child engaged in sexually explicit conduct;
- (iii) of realistic or graphic images of a child engaged in sexually explicit conduct; or
- (iv) of realistic or graphic images of a person appearing to be a child engaged in sexually explicit conduct; and

- (b) “sexually explicit conduct” includes actual or simulated of the following:
- (i) sexual intercourse, or lewd acts including physical contact involving genital to genital, oral to genital, anal to genital, or oral to anal, between persons of the same or opposite sex;
 - (ii) bestiality;
 - (iii) masturbation;
 - (iv) sadistic or masochistic abuse in a sexual context;
 - (v) exhibition for sexual purpose of the genital, buttock, breast, pubic area or anus; and
 - (vi) use of any object or instrument for lewd acts.

Making, producing, directing the making or production of, etc., child pornography

5. Any person who makes, produces, directs the making or production of, or participates, engages or is involved, in any way, in the making, production or the directing of the making or production of, any child pornography commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding thirty years and shall also be punished with whipping of not less than six strokes.

ILLUSTRATIONS

- (a) A, an actor approaches Z, a film producer so that A can act in one of Z’s film. Z offers A to act in child pornography and A agrees to do so. A acts in that child pornography. A is guilty of an offence under this section by participating in the production of child pornography.
- (b) A is a director of child pornography. A hires Z, an art director to oversee the artistic aspects of A’s direction of child pornography. Z does as required of him by A. Z is guilty of an offence under this section by participating in the directing of the making of child pornography.

Making preparation to make, produce or direct the making or production of child pornography

6. Any person who makes any preparation to make, produce or direct the making or production of any child pornography commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

Using a child in making, producing, directing the making or production of, etc., child pornography

7. Any person who uses or causes to be used a child in the preparation to make or produce, or in the preparation to direct the making or production of, or in the making or production of, or in the directing of the making or production of, any child pornography commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be punished with whipping of not less than five strokes.

Explanation—This section does not apply where the preparation to make or produce or the preparation to direct the making or production of child pornography or where the making or production or the directing of the making or production of child pornography uses or causes to be used a person appearing to be a child.

ILLUSTRATIONS

- (a) A entices Z, a child through a fake singing competition advertisement and uses Z in making child pornography. A is guilty of an offence under this section by using a child in the making of child pornography. A is also guilty of an offence under section 5 by making child pornography.
- (b) A offers his six-year-old daughter Z, to B for Z to act in child pornography for a certain amount of money. Z acts in child pornography that B produces. A is guilty of an offence under this section by causing Z, a child to be used in the production of child pornography. B is guilty of an offence under this section by using Z, a child, in the production of child pornography and under section 5 by producing child pornography.

Exchanging, publishing, etc., child pornography

8. Any person who—

- (a) exchanges, publishes, prints, reproduces, sells, lets for hire, distributes, exhibits, advertises, transmits, promotes, imports, exports, conveys, offers or makes available, in any manner, any child pornography;
- (b) obtains, collects or seeks any child pornography; or
- (c) participates in or receives profits from any business that he knows or has reason to believe is related to any child pornography,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than three strokes.

ILLUSTRATIONS

- (a) A is an administrator of a website showing child pornography. A is guilty of an offence under this section by making available child pornography online.
- (b) A carries on a logistic services business and manages the transportation and storage of publication material owned by Z's company. Z's publication material includes child pornography. Z reveals such information to A and makes profit sharing plan with A in relation to the sale of the child pornography with a condition that A continues to perform the logistic services for Z. A accepts Z's offer. A is guilty of an offence under this section by receiving profits from a business that he knows or has reason to believe is related to child pornography.

Selling, etc., child pornography to a child

9. Any person who sells, lets for hire, distributes, exhibits, advertises, transmits, promotes, conveys, offers or makes available, in any manner, any child pornography to a child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than five strokes.

Accessing, etc., child pornography

10. Any person who accesses, or has in his possession or control, any child pornography commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.

Explanation—A person is said to access child pornography if he knowingly causes child pornography to be viewed by, or transmitted to, himself.

ILLUSTRATIONS

- (a) A receives an e-mail from an unknown sender with an untitled attachment. A opens the attachment without knowing that the attachment contains child pornography. Upon viewing the content of the attachment, A immediately deletes the e-mail from his e-mail account. A is not guilty of an offence under this section.
- (b) A receives an e-mail from an unknown sender with an untitled attachment. A opens the attachment without knowing that the attachment contains child pornography. Upon viewing the content of the attachment and despite knowing that the attachment contains child pornography, A continuously views the child pornography. A is guilty of an offence under this section.
- (c) A uses B's computer and discovers a document containing child pornography stored in the computer's hard disk. A transmits the said documents into his pen drive and keeps the pen drive in his office. A is guilty of an offence under this section.

PART III**OFFENCES RELATING TO CHILD GROOMING****Sexually communicating with a child**

11. (1) Subject to subsection (3), any person who—

- (a) sexually communicates with a child; or
- (b) encourages a child to sexually communicate,

by any means, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding three years.

(2) For the purposes of this section, a person is said to sexually communicate if—

- (a) the communication or any part of the communication relates to an activity that is sexual in nature; or
- (b) any reasonable person would consider any part of the communication to be sexual.

(3) No person shall be convicted of an offence under this section if the communication is for education, scientific or medical purposes.

Child grooming

12. (1) Any person who communicates by any means with a child with the intention to commit or to facilitate the commission of any offence under section 5, 6, 7, 8, 14 or 15 or any offence specified in the Schedule against the child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to whipping.

(2) In any proceedings under this section, the fact that any offence under section 5, 6, 7, 8, 14 or 15 or any offence specified in the Schedule has been committed need not be specified or proven.

ILLUSTRATIONS

- (a) A communicates with Z, a child *via* social media by pretending to be a teenager and develops a love relationship with Z with the intention of using Z in the making of child pornography. A never meets Z. A is guilty of an offence under this section.
- (b) A communicates with Z, a child *via* e-mail and befriends Z with the intention that A's friends C and B could rape Z. A never meets Z. A is guilty of an offence under this section.

Meeting following child grooming

13. (1) Any person who, having communicated by any means with a child, travels to meet with the child or meets with the child with the intention to commit or to facilitate the commission of any offence under section 5, 6, 7, 8, 14 or 15 or any offence specified in the Schedule against the child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

(2) In any proceedings under this section, the fact that any offence under section 5, 6, 7, 8, 14 or 15 or any offence specified in the Schedule has been committed need not be specified or proven.

ILLUSTRATIONS

- (a) A communicates with Z, a child *via* social media by pretending to be a teenager and develops a love relationship with Z. A takes a step further and meets Z with the intention of using Z in the making of child pornography. A is guilty of an offence under this section.
- (b) A communicates with Z, a child *via* e-mail and befriends Z. A takes a step further and meets Z with the intention that A's friends C and B could rape Z. A is guilty of an offence under this section.

PART IV

OFFENCES RELATING TO SEXUAL ASSAULT

Physical sexual assault on a child

14. Any person who, for sexual purposes—

- (a) touches any part of the body of a child;
- (b) makes a child touch any part of the body of such person or of any other person;
- (c) makes a child touch any part of the child's own body;
or
- (d) does any other acts that involve physical contact with a child without sexual intercourse,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be liable to whipping.

Explanation 1—The act of touching may involve the act of touching with any part of the body or with an object and may be done through anything including anything worn by the person touching or by the child touched.

Explanation 2—In determining what constitutes sexual purposes, the court may take into consideration, among others, the part of the body that is touched, the nature and extent of the act of touching or the physical contact and all other circumstances surrounding the conduct.

Non-physical sexual assault on a child

15. Any person who—

(a) for sexual purposes—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or his body or any part of his body with the intention that such word or sound shall be heard, or such gesture or object or body or part of his body shall be seen by a child;

(ii) makes a child exhibit the child's body or any part of the child's body so as it is seen by such person or any other person; or

(iii) repeatedly or constantly follows or watches or contacts a child by any means;

(b) threatens to use any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means, of a body of a child or any part of a body of a child or of a child engaged in an activity that is sexual in nature;

(c) engages in an activity that is sexual in nature in the presence of a child;

(d) causes a child to watch such person or any other person engaging in an activity that is sexual in nature;

(e) causes a child to watch or hear any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means, of such person or any other person engaged in an activity which is sexual in nature; or

(f) makes a child engage in an activity that is sexual in nature,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding twenty thousand ringgit or to both.

Explanation—In determining what constitutes sexual purposes, the court may take into consideration, among others, the words uttered, the nature and extent of the gestures and all other circumstances surrounding the conduct.

PART V

PERSON IN A RELATIONSHIP OF TRUST

Person in a relationship of trust

16. (1) If a person who commits any offence under this Act or any offence specified in the Schedule against a child, is in a relationship of trust with the child, such person shall, in addition to the punishment to which he is liable for such offence, be punished with imprisonment for a term not exceeding five years and shall also be punished with whipping of not less than two strokes.

(2) In this section, a person is said to be in a relationship of trust with a child if the child is under his care, supervision or authority, including but not limited to—

- (a) a parent, guardian or person who is related through full- blood or half-blood, or through marriage or adoption, including *de facto* adoption;
- (b) a person who looks after one or more children for valuable consideration for any period of time;
- (c) a teacher, lecturer or warden of a kindergarten, school, public institution of higher learning or private institution of higher learning;
- (d) any person providing healthcare services in a Government healthcare facility or private healthcare facility as defined in section 2 of the Private Healthcare Facilities and Services Act 1998 [Act 586];
- (e) a coach; and
- (f) a public servant of whatever rank in the course of his duty under any written law in respect of the child.

PART VI

CAPACITY AND EVIDENCE OF CHILD WITNESS

Presumption as to capacity of a child witness

17. Notwithstanding anything contrary in any other written law, in any proceedings against any person relating to any offence under this Act, or any offence specified in the Schedule where the victim is a child, a child is presumed to be competent to give evidence unless the court thinks otherwise.

Evidence of child witness

18. Notwithstanding anything contrary in any other written law, in any proceedings against any person relating to any offence under this Act, or any offence specified in the Schedule where the victim is a child, the court may convict such person of such offence on the basis of the uncorroborated evidence of a child, given upon oath or otherwise.

PART VII

MISCELLANEOUS

Failure to give information

19. Notwithstanding section 13 of the Criminal Procedure Code [*Act 593*], any person who fails to give information of the commission of or the intention of any other person to commit any offence under this Act, or any offence specified in the Schedule where the victim is a child, to the officer in charge of the nearest police station, commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Presumption of age of a child

20. It is not a defence to a charge for any offence under this Act, or any offence specified in the Schedule where the victim is a child, that an accused believed that the age of the child is or more than that as specified in the respective provisions of such offences at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the child.

Abetment

21. Any person who abets the commission of any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Evidence of *agent provocateur* admissible

22. (1) Notwithstanding any law or rule of law to the contrary, in any proceedings against any person relating to any offence under this Act, or any offence specified in the Schedule where the victim is a child, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any law or rule of law to the contrary, a conviction of any offence under this Act, or of any offence specified in the Schedule where the victim is a child, solely on the uncorroborated evidence of any agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

Offence by body corporate

23. If any offence under this Act, or any offence specified in the Schedule where the victim is a child has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he had exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Non-application of sections 173A, 293 and 294 of the Criminal Procedure Code

24. Sections 173A, 293 and 294 of the Criminal Procedure Code shall not apply in respect of any offence under this Act, or any offence specified in the Schedule where the victim is a child, if the person convicted of such offence is of or above the age of eighteen years.

Provision regarding whipping

25. Notwithstanding paragraph 289(c) of the Criminal Procedure Code, if a person convicted of any offence under this Act is a male whom the court considers to be more than fifty years of age, he may still be punishable with whipping.

Rehabilitative counselling

26. (1) The court may, in addition to any punishment imposed for any offence under this Act, or any offence specified in the Schedule where the victim is a child, order period of rehabilitative counselling on the person convicted of such offence within the period of his detention.

(2) The rehabilitative counselling ordered under subsection (1) shall be under the Minister charged with the responsibility for prison.

Police supervision

27. (1) Notwithstanding subsection 295(1) of the Criminal Procedure Code, whether or not he has previously been convicted of any offence, when a person is convicted of any offence under this Act, or of any offence specified in the Schedule where the victim is a child, 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.

(2) When any person subject to the supervision of the police under subsection (1) is, while still subject to such supervision, sentenced to a term of imprisonment within Malaysia, any term spent in prison shall be excluded from the period of supervision.

Schedule

28. The Minister may, upon consultation with the Public Prosecutor, amend the Schedule by order published in the *Gazette*, including to exclude or include any offence of any description under any written law.

SCHEDULE

[Sections 2, 3, 12, 13, 16, 17, 18, 19, 20, 22, 23, 24, 26, 27 and 28]

1. Section 354, 372, 375, 375B, 376, 376A, 376B, 377A, 377B, 377C, 377CA, 377D, 377E or 509 of the Penal Code [*Act 574*] except—
 - (a) for the purposes of section 24 of this Act relating to the non-application of sections 173A and 294 of the Criminal Procedure Code to a serious offence under the Penal Code; and
 - (b) for the purposes of sections 26 and 27 of this Act relating to sections 376, 377C, 377CA and 377E of the Penal Code
2. Section 14 or 15 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [*Act 670*], in so far as it relates to sexual exploitation, except—
 - (a) for the purposes of section 3 of this Act relating to the application of paragraphs 4(b) and (c) of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007; and
 - (b) for the purposes of sections 22 and 23 of this Act
3. Section 31 in so far as it relates to sexual abuse or section 43 of the Child Act 2001 [*Act 611*]
4. Section 211 or 233 of the Communications and Multimedia Act 1998 [*Act 588*] except for the purposes of sections 3 and 23 of this Act
5. Section 5 of the Film Censorship Act 2002 [*Act 620*] except for the purposes of section 23 of this Act