

Laws regarding child sexual abuse

1.1 Introduction

Child sexual abuse is a crime. Any person who commits such a crime can be prosecuted and, if found guilty, can be jailed and/or whipped and/or fined. The prosecution will be conducted by the Deputy Public Prosecutor (DPP) who represents the State. The accused will be represented by his/her own lawyer. The victim is the complainant and is required to give evidence in court as a witness. To reduce the trauma faced by the victim, it is necessary for the victim to be briefed about the legal process and receive counselling and support before and during the trial. The services of a lawyer should be obtained to act on behalf of the victim during the trial to protect the victim's interest (by holding a watching brief). This can be done with the help of Legal Aid Centre (LAC), the Government Legal Aid Bureau (Jabatan Bantuan Guaman) and Non-Governmental Organisation (NGO) which provide such services.

1.2 The Offences

The aim of criminal law is to punish and rehabilitate the offenders so that they will not commit the offences again. Even though the victim may not get any monetary compensation from the prosecution, it should stop further abuse of the victim and prevent the abuser from abusing other children. When the judgement is passed, the victim can seek compensation for any harm suffered.

The victim (through adults) can simultaneously institute civil proceedings against the abuser. The victim can claim for damages for expenses incurred (e.g. hospital treatment, alternative accommodation, traveling, etc.) and for pain and suffering. It is important to note that any school or institution may be sued for damages if it can be proven that the institution was negligent in not taking any safety measures or contributed to any case of child sexual abuse.

Under the Child Act 2001, a Protector from the Social Welfare Department can remove a child who has been abused or who is in

need of care and protection, and place the child under the care of other family members, foster family or welfare home. Offenders can be prosecuted for offences defined in the Act.

Depending on the facts or evidence, a person who commits child sexual abuse can be prosecuted for any one or more of the following criminal offences:

1.3 Penal Code – sexual crimes offences against children

1.3.1 Offences under the Penal Code

Sections	Offences	Sentences
354	Molestation is an assault or use of criminal force on a person with intent to outrage modesty.	Maximum 10 years jail or fine or whipping or any two of such punishment.
355	Assault or use of criminal force with intent to dishonour a person otherwise than on grave provocation.	Maximum 2 years jail or fine or both.
372	Exploiting any person for purposes of prostitution.	Maximum 15 years jail and fine and whipping.
375 (a, g) & 376	Rape is sexual intercourse with a woman who is not his wife and without her consent. Statutory rape is sexual intercourse with a girl under 16 years of age with or without her consent.	Maximum 20 years jail and whipping.
375B	Gang rape.	Imprisonment minimum of 10 years and maximum of 30 years.

376 (2) (d,e)	Statutory rape without a girl's (below 16 years of age) consent and sexual intercourse with a girl below 12 years of age with or without her consent can get heavier sentences.	Minimum 5 years and maximum 30 years and whipping.
376 (4)	Causes death of the woman while committing or attempting to commit rape.	Death or minimum 15 years jail, maximum 30 years jail and whipping minimum 10 strokes.
376A & 376B	Incest is sexual intercourse with someone whom that person is not allowed to marry, whether under the law, religion, custom or usage.	Minimum 10 years jail and maximum 30 years jail and whipping.
377A & 377B	Sodomy is carnal intercourse against the order of nature which is sexual connection with another person by introduction of the penis into the anus or mouth of the other person.	Maximum 20 years jail and whipping.
377C	Committing carnal intercourse against the order of nature without consent, or putting the other person in fear of death or hurt to the other person or any other person.	Minimum 5 years jail and maximum 20 years jail and whipping.
377CA	Sexual connection by the introduction of any object into the vagina or anus of another person without consent.	Minimum 5 years jail and maximum 30 years jail and whipping.
377D	Outrages on decency.	Maximum 2 years jail.
377E	Inciting a child under 14 years to an act of gross indecency.	Minimum 3 years jail and maximum 15 years jail and whipping.
509	Word or gesture intended to insult the modesty of any person.	Maximum 5 years jail or a fine or both.

1.3.2 Attempts

Under Section 511, whoever attempts to commit an offence and in such an attempt does any act towards the commission of such an offence shall be punished with such punishment as is provided for the offence: provided that any term of imprisonment imposed shall not exceed one-half of the longest term provided for the offence.

1.4 The Child Act 2001 and the Child (Amendment) Act 2016

The Child Act 2001 (“the Act”) came into force in 2001 and consolidates the laws relating to the care, protection and rehabilitation of children. It seeks to safeguard the interests of children who are at risk. It replaces the Juvenile Courts Act 1947, the Women and Girls Protection Act 1973 and the Child Protection Act 1991, all of which have now been repealed.

The Act provides for Child Protection Teams to be established throughout Malaysia to coordinate services for families and children who are or may be in need of protection. Each team is made up of a medical officer and a senior police officer, both under the leadership of a “Protector” (a specially appointed Social Welfare Officer).

The Act also covers the forming and powers of the Courts for Children where Magistrates, assisted by up to 2 advisers of whom one must be a woman, shall hear cases involving children. When deciding what kind of order to make, the Courts shall hold the child’s interests to be of paramount importance.

In 2016, the Act was amended to improve child protection through the setting up of the National Council for Children (to replace the Co-ordinating Council for the Protection of Children) and local Child Welfare Teams. In addition, the courts can now impose community service orders (CSO) for the rehabilitation of offenders and the penalties for offences under the Act have been increased.

In 2017, a registry of child offenders was set up by the Women, Family and Community Development Ministry to help employers run a background check on their potential employees. This database is being improved and is only available upon request made to the director-general of the Social Welfare Department.

1.4.1 Definition of a child (Section 2)

Under the Act, a “child” is a person under the age of 18 years, except in criminal proceedings, where it refers to a person under 10 years of age, or to a person between the ages of 10 and 12 years who does not understand the nature and consequences of what he has done.

1.4.2 Restriction on media reporting and reporting (Sections 15)

- a. Any mass media report regarding:
- i. any step taken against a child who is or is said to be involved in any criminal act or omission;
 - ii. any child in need of care, protection and rehabilitation who has been taken into custody;
 - iii. any child beyond control whom has been detained;
 - iv. any child victim or suspected child victim; or
 - v. any proceedings regarding any child in need of protection and rehabilitation

shall not reveal the name, address or educational institution, or include any particulars which may lead to the identification of that child.

- b. A picture of any such child or of any other person, place or thing which may lead to the identification of that child may not be published in any newspaper or magazine or transmitted through any electronic medium.
- c. Any person who contravenes these provisions may be fined up to RM10,000 or sentenced to a maximum of 5 years’ imprisonment or both.

1.4.3 Sexual abuse (Section 17)

A child is deemed to have been sexually abused if the child took part in or was an observer of any activity of a sexual nature, for the purposes of any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or is sexually exploited by anyone to fulfil his or any other person’s sexual gratification.

1.4.4 Child in need of care and protection (Section 17)

A child would be deemed to be in need of care and protection if, among others:

- a. the child has been or may be physically or emotionally injured, or sexually abused by her parent or guardian or family member;
- b. the child has been or may be physically or emotionally injured, or sexually abused and the child's parent or guardian, knowing about this, has not or may not protect the child from such injury or abuse;
- c. the child is or may have been the victim of any of the offences in the First Schedule of the Act (including kidnap, rape, incest, sodomy and causing hurt) and his parent or guardian committed or is suspected of committing the offence or has not or may not protect her from the commission of such offence; or
- d. the child lives in the same household as either the victim or the offender in (c) above and may also be victimised, and his parent or guardian committed or may have committed the offence or may not protect her.

1.4.5 Temporary custody (Section 18)

Any Protector or an Assistant Protector or police officer who is satisfied that a child is in need of care and protection or rehabilitation may in the child's best interest remove that child from the child's home and place that child into temporary custody.

1.4.6 Producing a child before a Court For Children (Section 19)

Every child who is taken into temporary custody by a Protector or police officer should be brought before a Court for Children ("the Court") within 24 hours or before a Magistrate who may direct the child to be temporarily placed in a place of safety or centre, or under the care of a fit and proper person.

1.4.7 Medical examination or treatment (Section 20, 21 & 22)

If a Protector or an Assistant Protector or police officer, is of the opinion that the child needs medical examination or treatment, he or she may either take the child to hospital or direct the child's caregiver to do so. The Protector or police officer may also authorise the child's hospitalisation and any medical, surgical or psychiatric treatment needed if there is immediate risk to the health of the child.

1.4.8 Duties of medical officers, family members and child care providers (Section 27, 28, 29)

a. If:

- i. a medical officer or registered medical practitioner believes that a child he is examining or treating; or
- ii. any member of a child's family; or
- iii. a child care provider

believes on reasonable grounds that the child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or that the child has been sexually abused, he shall immediately inform a Social Welfare Officer.

- b. A medical officer, registered medical practitioner or caregiver who fails to do so may be liable to a fine of maximum RM5,000 or maximum 2 years' imprisonment or both.
- c. Any family members who fail to comply with this duty and upon conviction can be liable to a fine maximum of RM5,000 or to imprisonment maximum of 2 years or to both.

1.4.9 Information on children in need of care and protection (Section 29A)

If any person, other than referred in sections 27, 28, and 29, has reason to believe that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed or is sexually abused, he may give such information to a Social Welfare Officer.

1.4.10 Powers of Court For Children (Section 30)

If a Court For Children is satisfied that any child brought for temporary custody for child in need of care and protection, and after considering to place a child in a family based care may:

- a. order the parent or guardian to execute a bond to exercise proper care and guardianship;
- b. make an order to place the child in the custody of a fit and proper person;
- c. child with no parent or guardian, to be placed in the care, custody and control of foster parent or a fit and proper person;
- d. make an order to place the child in a centre.

1.4.11 III- treatment, neglect, abandonment or exposure of children (Section 31(1))

Any person having the care of a child and:

- a. who abuses, neglects, abandons or exposes the child or acts negligently in a manner likely to cause her physical or emotional injury or causes or permits her to be abused, neglected, abandoned or exposed; or
- b. who sexually abuses the child or causes or permits her to be so abused, commits an offence and shall be liable to a fine of up to RM50,000 or up to 20 years' imprisonment or both, and may be required to execute a bond of good behaviour subject to conditions approved by the Court and to perform community service.

1.4.12 Children not to be used for begging, etc. (Section 32)

Any person who causes or procures any child or, being a person having the care of a child, allows that child to be on any street, premises or place for the purposes of begging or any illegal activities shall on conviction be liable to a fine maximum RM20,000 or imprisonment maximum 5 years or both. In addition, may be ordered to perform community service.

1.4.13 Offence to leave a child without reasonable supervision (Section 33)

Any person who, being a parent or guardian or person having the care of a child, leaves that child without providing reasonably for the child's supervision and care shall be liable to a fine of up to RM20,000 or up to 5 years' imprisonment or both and in addition, to perform community service.

1.4.14 Child in need of protection and rehabilitation (Section 38)

A child would be deemed to need protection and rehabilitation if the child is being induced to perform any sexual act or is in any physical or social environment which may lead to the performance of such an act.

1.4.15 Removal of a child to a place of refuge (Section 39)

Any Protector or police officer who is satisfied that a child is in need of care and protection or rehabilitation may order the child to be removed immediately and temporarily placed in a place of refuge.

1.4.16 Child in urgent need of protection (Section 41)

- a. Any child who is in urgent need of protection may apply to the Protector to be put in a place of refuge. The Protector would need to be satisfied that there are reasonable grounds to believe, among others, that the child is being threatened or intimidated for any immoral purpose (e.g. prostitution or sexual intercourse); or if the child is female, that she is pregnant out of wedlock.
- b. Any child in urgent need of care and protection may also apply under this section to the person in charge of any place of refuge, who may also receive the child into the place of refuge.

1.4.17 Other Offences (Section 43)

Any person who buys, sells, lets for hire, traffics in or otherwise detains a child for the purpose of prostitution or for immoral purposes shall be liable to a fine of up to RM50,000 or up to 15 years' imprisonment or both.

1.5 Sexual Offences Against Children Act 2017 (SOAC)

The Act came into force in July 2017 to provide for certain sexual offences against children which are not adequately covered by the Penal Code and Child Act. For example, the use of grooming and social media to prey on children in order to commit sexual assaults against them have to be addressed. The most prominent case of this kind involved the British paedophile Richard Huckle who posed as a volunteer teacher in Malaysia for 9 years. It was found that he had groomed and sexually assaulted around 191 children including those from Malaysia and had shared thousands of images of sexually abused children on the dark web.

Among the new offences addressed under this Act are those involving child pornography, child grooming, physical and non-physical sexual assaults against children, and, punishment for these offences has been enhanced.

1.5.1 Offences relating to child pornography (Section 4 to 10)

- a. Section 4 to 10 of the Act prohibits the production, distribution, and viewing of child pornography. Child pornography is defined to cover all forms of visual, auditory, or written media. Any person who makes, produces or directs the making of, or participates in any way in child pornography, commits an offence. On conviction, the person is liable to imprisonment for a term not exceeding thirty years and whipping of not less than six strokes.
- b. Even those who make any preparation to make child pornography are liable to punishment.
- c. Section 8 prohibits the exchanging, publishing, printing, selling, transmitting, etc of child pornography and Section 9 prohibits the selling, dealing, distributing and advertising of any child pornography to a child.
- d. Any person who accesses, or has in his possession any child pornography commits an offence.

1.5.2 Offences relating to child grooming (Section 11, 12, 13)

- a. Section 11 prohibits any form of sexual communication with a child. Anyone found guilty is liable to imprisonment for a term not exceeding 3 years.
- b. Section 12 prohibits child grooming such as the use of social media to develop a love relationship with a child with the intention of using the child to make child pornography. It is illegal for any person to communicate by any means with a child with the intention to commit any offence under the Act, even if they never actually meet, and on conviction, can be punished with imprisonment for a term not exceeding 5 years and whipping.
- c. Section 13 provides for heavier penalty if there is any meeting following child grooming. Any person who, having communicated by any means with a child, meets with the child with the intention to commit any offence under the Act is liable and can be punished with imprisonment for a term not exceeding 10 years and to whipping.

1.5.3 Prohibition of physical sexual assault on a child (Section 14)

Section 14 defines sexual assault to include touching for sexual purposes any part of the body of a child or getting a child to touch any person or themselves for sexual purposes. If found guilty, the person is liable to imprisonment for a term not exceeding 20 years and to whipping.

1.5.4 Prohibition of non-physical sexual assault on a child (Section 15)

Section 15 defines non-physical sexual assault on a child to include a wide spectrum of acts carried out by any person for sexual purposes. These acts include but are not limited to exhibiting any part of his body to a child, making a child exhibit the child's body to any person, repeatedly following or contacting a child by any means, threatening to use any image of any part of the child's body, causing a child to watch any person engaging in a sexual activity or making a child engage in a sexual activity. If found guilty, the person is liable to imprisonment for a term not exceeding 10 years or to a fine not exceeding RM20,000 or to both.

1.5.5 Extra punishment if offender in relationship of trust with the child (Section 16)

- a. Section 16(1) provides for a more severe punishment if a person, who commits any offence under this Act, is in a relationship of trust with the child. Such person shall be punished for the offence and, in addition, he shall be given imprisonment for a further term not exceeding 5 years and whipping of not less than 2 strokes of whipping.
- b. Section 16(2) stipulates that a person is in a relationship of trust with a child if the child is under his care, supervision or authority. Such a person includes but is not limited to: parent, guardian or relative, child care provider, teacher, lecturer or warden of a kindergarten, school, public institution of higher learning or private institution of higher learning, any healthcare personnel, a coach, and a public servant.

1.5.6 Failure to give information (Section 19)

Section 19 provides for punishment of any person who fails to give information if he or she is aware of anyone doing or intends to do any sexual acts to a child or does any acts that is considered an offence under this Act. The person with such information must report to the officer in charge of the nearest police station failing which the person is liable to a fine not exceeding RM5,000.

1.5.7 Whipping, Rehabilitative Counselling, Police Supervision (Section 25, 26, 27)

- a. Section 25 provides that if a person who is convicted of any offence under this Act is a male who is more than fifty years of age, he may still be punishable with whipping.
- b. Section 26 provides that the court may, in addition to any punishment imposed, order a period of rehabilitative counselling on the person convicted within the period of his detention.
- c. Section 27 provides that when a person is convicted of any offence under this Act, the court shall direct that he be subject to the supervision of the police for a period of not less than 1 year and not more than 3 years after the expiration of the sentence passed on him.