

**NEWS RELEASE**

**PUBLIC CONSULTATION ON PROPOSED AMENDMENTS TO THE PENAL CODE**

The Ministry of Home Affairs is putting up the proposed amendments to the Penal Code for public consultation at REACH portal [www.reach.gov.sg](http://www.reach.gov.sg) (Consultation Channel) from Thu 9 Nov 06.

2 The review brings the Penal Code up to date, and makes it more effective in maintaining a safe and secure environment in today's context.

3 The last major amendments of the Penal Code were made in 1984, and the penalties for fines in 1952. In the interim period, sections have been amended but there has not been a comprehensive review of the Penal Code. With more than 500 sections, the Penal Code is a very important piece of legislation and every effort has been made to ensure that the review has been as thorough as possible. This review covers all the sections in the Penal Code to assess whether they should be amended, in relation to the other provisions in the Code as well as other statutes in Singapore, where applicable. We also looked at relevant legislation in other countries. The review has taken into account the impact of technology, such as the Internet and mobile phones, which have become an integral part of the lifestyle in Singapore, and are increasingly employed by criminals to perpetrate their criminal activities. It also took cognizance of Police's and the Attorney-General's Chambers' experience in applying the Penal Code, as well as court pronouncements and public feedback.

**Updating the Legislation**

4 The proposed changes cover three main areas:

- a) Expand and modify the scope of 19 existing offences and introduce 19 new offences;
- b) Update and clarify definitions, explanations and expressions (involving 21 sections);
- c) Review penalties of existing offences as well as propose penalties for new offences (altogether involving about 380 sections).

The penalties in the Code have also been reviewed and updated to ensure that they continue to effectively deter criminal activities, and to give the Courts more flexibility in sentencing. The fines have been updated to take into account changes in the purchasing power of money, as the fines have not been adjusted since 1952.

5 The review of the Penal Code has been done in consultation with the Attorney-General's Chambers, the Ministry of Law and various other agencies such as the Ministry of Community Development, Youth and Sports. The proposed amendments will also be sent to the Law Society for its views and inputs.

**EMBARGOED TILL WED, 8 NOVEMBER 2006, 6.00 PM**

6 Senior Minister of State for Law and Home Affairs A/Prof Ho Peng Kee says,

"In reviewing the Penal Code, our approach is to update its provisions so that they remain relevant and effective in view of societal and global changes.

As an important criminal law legislation, the Penal Code should reflect the values of Singapore society. Certain fundamental values remain close to our hearts, such as the need to protect minors, an area we have enhanced.

Updating the provisions on penalties will give the Courts greater flexibility in sentencing."

**Public Consultation from 9 Nov**

7 The public are invited to give their feedback and views via the Consultation Channel in the REACH portal at [www.reach.gov.sg](http://www.reach.gov.sg). The public consultation that begins on Thu 9 Nov will last till Sat 9 Dec. The Ministry will consider the feedback received from the public consultation and from other channels, including that of the Law Society, before tabling the updated proposed amendments in Parliament in the first half of next year.

MINISTRY OF HOME AFFAIRS  
8 NOVEMBER 2006

## **CONSULTATION PAPER ON THE PROPOSED PENAL CODE AMENDMENTS**

### **Aim**

The Ministry of Home Affairs (MHA) invites public feedback on the draft Penal Code (Amendment) Bill.

### **Background**

2. The Penal Code (Chapter 224) is Singapore's primary criminal legislation, with 511 sections in all. Based on the Indian Penal Code, it last underwent a major review in 1984, when mandatory minimum sentences were imposed for offences such as robbery and rape. Enhanced penalties were also introduced in 1998 for specific offences, such as causing hurt or grievous hurt, when committed against foreign domestic workers.

3. Due to the large number of provisions and its extensive coverage, as well as the time lag since the last review, the current review has been an extensive one. This review will bring the Penal Code up to date, and make it more effective in maintaining a safe and secure society in today's context. It was carried out in consultation with the Attorney General's Chambers, Ministry of Law, and various other agencies.

4. Besides taking into account new technological developments, for example, the impact of technology such as the Internet and mobile phones, which have become an integral part of the lifestyle in Singapore and are increasingly being used by some to perpetrate criminal activities, these amendments also took into account Police's and the Attorney General's Chambers' experiences in applying the Penal Code, Court pronouncements and public feedback given over time.

### **Scope of proposed amendments**

5. Broadly, the proposed changes to the Penal Code can be categorised into these areas of review:

- A. Offences
  - i) Expand and modify scope of existing offences
  - ii) Introduce new offences
  - iii) Repeal certain offences
  
- B. Definitions, explanations, expressions
  - Update and clarify definitions, explanations and expressions
  
- C. Penalties
  - i) Review penalties of existing offences

- ii) Set penalties for new offences

**A (i) Expand and modify scope of existing offences**

6. MHA recommends expanding the scope of 19 sections<sup>1</sup>. These changes would help to cover potential crime areas which are currently unaddressed, as well as to clarify the law. For example, we propose expanding some sections to cover offences committed via electronic medium, such as s.292 (sale of obscene books, etc), s.298 (uttering words, etc with deliberate intent to wound the religious feelings of any person), s.499 (defamation) and s.505 (statements conducing to public mischief). This ensures that the Penal Code keeps abreast of changes, especially technological changes.

7. We propose to amend s.415 on cheating to make clear that (i) the offence of cheating would be committed whether or not the deception was the sole or main inducement; (ii) it extends to cover damage or harm to any person instead of to that person only; and (iii) any representation made through an agent will be treated as having been made by the person himself. These changes would facilitate prosecution, to more effectively protect the public. In particular, with regard to (iii) above, an explanation would be included in s.415 to make it clear that a representation made through a person acting as an agent for the accused, can also amount to fraudulent or dishonest representation by and on behalf of the accused. This explanation is in line with Court pronouncements and removes any uncertainty in the law.

8. For "unlawful assembly" (s.141), the provision has also been amended to make it clear that an assembly of 5 or more people whose common object is to commit any offence, and not just those relating to public tranquility, would also constitute an "unlawful assembly". This clarifies the definition of "unlawful assembly" to make it clear that the offence need not be an offence involving public tranquility and is in line with Court pronouncements.

9. Arising from the case of the racist bloggers who were charged under the Sedition Act, we propose amending the Penal Code to provide another option to the Sedition Act, to charge such offenders in future cases. Hence, MHA recommends expanding the scope of s.298 on "Uttering words, etc with deliberate intent to wound the religious feelings of any person" to cover the wounding of racial feelings as well. For future such cases, where appropriate, prosecution can have the option to proceed under the Penal Code or the Sedition Act.

10. Currently, s.377 criminalises all forms of carnal intercourse against the order of nature, other than vaginal intercourse, between a man, woman, or an animal, regardless of whether consent was obtained or if the act was performed in a public or private place. We intend to repeal s.377, re-scoping it such that anal and oral sex, if done in private between a consenting adult heterosexual couple aged 16 years old and above, would no longer be criminalised. As part of the re-

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<sup>1</sup> These are: s.40, s.41, s.141, s.120A, s.292, s.293, s.298, s.320, s.354, ss.375/376, ss.376A/376B/376C, s.377, s.383, s.385, s.397, s.415, s.430, s.499 and s.505.

scoping, the archaic term "carnal intercourse against the order of nature" will be removed. The offence of bestiality, currently covered under s.377, will be expanded to cover the scenario where a person was compelled by another person to perform bestiality without his consent.

11. As for sexual offences, "incest" (ss.376A/376B/376C) will be expanded to  
i) cover other sexual acts involving penetration, in addition to sexual intercourse;  
ii) cover penetrative sexual acts between a grandmother and her grandson and  
iii) provide that a boy under 16 cannot be prosecuted for incest (as currently provided for females under 16 yrs old), as they are not mature enough to make an informed decision.

12. For the provision on "rape", its scope would be amended to cover persons who have undergone a sex reassignment procedure, and to define sexual intercourse to include acts involving a surgically constructed penis or vagina that is integrated into the body of a person.

13. Currently, a husband cannot be prosecuted for raping his wife. Marital immunity therefore exists for a man who engages in non-consensual sexual intercourse with his wife 13 years of age and above. Given the changed status of women and the evolving nature of the marital relationship, it is proposed that such marital immunity be withdrawn, if:

- (a) the wife was at the time of the offence living separately from him under a judgment of judicial separation or an interim judgment of divorce not made final;
- (b) at the time of the offence, there was in force an injunction restraining him from having sexual intercourse with his wife; or
- (c) at the time of the offence, there was in force a protection order under s.65 or an expedited order under s.66 of the Women's Charter (Cap. 353) made against him pursuant to an application by his wife.

14. Tougher penalties will also be introduced for outraging the modesty of a minor under 14 years of age under s.354. The age restriction under existing s.293, which makes it an offence for a person to sell, hire, distribute, exhibit or circulate any obscene object to any person under 20 years of age, will be increased to 21 years of age, in line with the Restricted 21(R21) classification for films.

#### **A (ii) New offences**

15. We will be introducing 19 new offences<sup>2</sup> to update the Penal Code. Currently, these acts are either not covered, or are prosecuted under related provisions in the Penal Code, which do not specifically address these offences.

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<sup>2</sup> The new offences are: s.4, s.108B, s.130D, s.204A, s.204B, s.241A, s.254A, s.298A s.363A, s.364A, s.473A, s.473B, s.376A, s.376B, s.376C, s.376D, s.376E, s.376, s.377.

16. Examples are new provisions to tackle credit-card fraud more effectively, rather than relying on other related provisions in the Penal Code, such as s.420 on "Cheating and dishonestly inducing a delivery of property" and s.473 on "Making or possessing counterfeit seal etc to commit a forgery". s.473B (making or possessing equipment for making a false instrument with intention to induce prejudice) will be introduced to help tackle credit-card fraud more effectively.

17. Currently, a person who abets the commission of an offence in Singapore while he is outside Singapore cannot be tried for the offence of abetment. Given the ease of communications via the internet and mobile phones, it is proposed that we introduce a new s.108B to make clear that it is an offence for a person who while outside Singapore abets an offence which is committed in Singapore, even if any or all of the acts of abetment were done outside Singapore.

18. We propose introducing s.204A and s.204B to make it an offence for a person to pervert the course of justice before a trial. Currently, if a person perverts the course of justice before a trial, it is not an offence. The offence of "obstructing, preventing, perverting or defeating course of justice" (s.204A) is a general offence; while the offence of "bribery of witnesses" (s.204B) will be a specific offence to deal with persons who bribe or who try to induce witnesses from giving evidence and to deal with witnesses who accept bribes to avoid giving true testimony.

19. We propose to enact a new offence which covers an act that is likely to cause racial or religious disharmony or the promotion of enmity between different groups on the grounds of race or religion, for wider coverage.

20. To protect minors against sexual exploitation in Singapore, sexual penetration of a minor under 16 years of age (the existing age of consent of 16 years under the Women's Charter is extended to sexual acts such as oral and anal sex covered under this new offence) and prostitution of a minor under 18 years of age will be criminalised. While we enhance protection of minors in Singapore, we should not condone sexual exploitation of minors in other countries. We therefore propose to extend extra-territorial jurisdiction over Singapore Citizens and Permanent Residents who purchase or solicit sexual services from minors overseas. To help combat child sex tourism, we also plan to enact a new offence of organising or promoting child sex tours.

21. It is proposed that a new offence be introduced for procuring sexual activities with a person with mental disability, who is capable of consent, but where inducement, threat or deception was used to obtain the consent. As the capacity of a person with mental disability to consent may be more easily compromised and they may be more vulnerable to relatively low levels of inducement, threat and deception, introducing this new offence would enable us to protect this group of vulnerable persons.

22. A new offence of sexual assault by penetration would also be introduced. The intention is to prosecute non-consensual penetrative sexual acts, such as oral and anal sex and using body parts (other than the penis) and objects. With oral and anal sex decriminalised under s.377, this new offence is required to

cover non-consensual oral and anal sex, along with the appropriate penalties for such acts. Engaging in sexual activities with a minor under 14 years of age, with or without the consent of the minor, would also be an offence. The offence would also cover the scenario where a person is compelled by another to penetrate himself or herself, a third person or the perpetrator.

23. A new offence of necrophilia will cover the abhorrent act of engaging in penetrative sexual acts with a corpse, and the scenario where a person is compelled by another person to perform necrophilia without his consent.

#### **A(iii) Repeal certain offences**

24. 4 provisions (s.243A, s.376D, s.489E and s.498) will be repealed. S.243A on the "forfeiture of counterfeit coin" and s.489E on the "forfeiture of counterfeit currency" spell out the criminal procedure, such as the rights accorded to Police for conducting search and seizure of counterfeit coins or currency, die, instrument or material, without the need for a warrant. As these processes are part of the criminal procedure, it is more appropriate for these two sections to be repealed and transferred to the Criminal Procedure Code (CPC).

25. Another provision to be repealed is s.376D on "sanction", which states that for an offence of incest, no prosecution can proceed without the sanction of the Attorney-General or the Solicitor-General. As this is part of the criminal procedure, it is more appropriate for this provision to reside in the CPC.

26. We also intend to repeal s.498 on enticing, taking away or detaining a married woman with a criminal intent, as it is an archaic offence which is no longer relevant in today's context.

#### **B) Update and clarify definitions, explanations and expressions**

27. 21 sections<sup>3</sup> will be amended or introduced to update and clarify definitions, explanations and expressions in the Penal Code. For example, we are substituting the term "current coin" with "legal tender". The definition of "document" will be also amended to cover offences committed via electronic means, while the definition of "valuable security" will be amended to include credit cards, charged cards and stored value cards. Supplemental provisions to sexual offences will be introduced to define "sexual", "touching", "penetration", "obscene" etc., and elaborate on the concept of consent by introducing evidential presumptions and conclusive presumptions on consent.

#### **C(i) Penalties of existing offences**

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<sup>3</sup> They are sections .21, 27, 29, 29A, 30, 31A, 43, 71, 121B, 151A, 159, 160, 230, 236, 467, 477, 477A, as well as supplemental provisions to define "sexual" and "penetration" under new s.377C, "obscene" in new s.42, "touching" in new s.376E and "consent" in new ss.377E/377F/377G.

28. There are 21 chapters in the Penal Code containing penalties. Our review of penalties consists of imprisonment terms, fines and caning for all offences in the Penal Code. In deciding whether to change the penalties, we have considered the following:

- a. The type and quantum of punishment should provide sufficient flexibility to our Courts to mete out an appropriate sentence in a particular case, rather than to amend the law to adjust penalties every now and then;
- b. The developments in the crime scene between 1984, when the Penal Code was last amended substantially, till 2005, when deciding whether to change penalties;
- c. To abolish mandatory minimum penalties where there is no longer any need to retain them;
- d. To reduce the gap between 10 years or life imprisonment for double-limb penalty provisions;
- e. The proportionality of a penalty to an offence;
- f. The maintenance of the scale of penalties for related offences within the Penal Code; and
- g. The relativity of penalties when similar offences are located in different statutes.

The overall aim of the penalty framework is to reduce crime, protect the community and maintain law and order.

29. For imprisonment terms, we have avoided increasing imprisonment terms unnecessarily. Imprisonment and caning are punishments with higher signature. If increasing the fine is sufficient, we have refrained from increasing the imprisonment term as well.

30. Fines in the Penal Code were last updated in 1952 when all fines were doubled. In order to restore fines to today's value, we are using the Consumer Price Index (CPI), started in 1961, to adjust fines in the Penal Code by a factor of 3, to take into account changes in the purchasing power of money.

31. It is proposed that the fines in the Penal Code be either: i) increased by a factor of 3 to adjust for changes in the purchasing power of money from 1961; or ii) increased by a factor of 5 if there is a need for deterrence purposes due to prevalence or to provide greater sentencing discretion to the courts in lieu of imprisonment. As the fine limits being raised are the maximum allowable, it does not mean that fines imposed will automatically triple after the amendments are passed into law. The courts will have the discretion to decide if higher fines are appropriate, based on the circumstances of the case. With higher maximum fines, the Courts will have greater flexibility to impose a fine alone, instead of an imprisonment term if the maximum fine amount is deemed inadequate for a particular offence.

32. For the sections which provide for a maximum of two out of the three penalty options of imprisonment, fine and caning to be meted out, we have recommended to allow the courts greater discretion to mete out any combination of the penalties.



**C(ii) Penalties of new offences**

33. We have also set the penalties of new offences according to the same principles as for the review of the penalties of existing offences. The proposed penalties for new offences include the death penalty for genocide, as it involves the killing of any person (s.130E) and kidnapping or abducting of any person in order to compel the Government or any person from doing any act (s.364A), which are extremely serious offences. Optional caning is provided for the new offences related to abduction and kidnapping (s.363A and s.364A). This is to be consistent with the related offences of kidnapping or abduction also provide for optional caning. The penalties of all the new offences, except for Genocide, carry the option of fines.

34. We intend to introduce the following penalties for these new offences:

- i) Penalties for new offence of sexual assault by penetration:
  - a) Imprisonment for a term which may extend to 20 years and shall be liable to fine or to caning. Same penalties apply when the victim is a minor under 14 years of age, with or without the consent of the minor;
  - b) Imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning of not less than 12 strokes, if there are aggravating circumstances or where there is non-consensual penetration of a minor under 14 years of age.
- ii) Imprisonment for a term which may extend to 10 years or fine or both, for the new offence of sexual penetration of a minor below 16 years of age (covers primarily consensual offences). We have enacted stiffer penalties than the offence of sexual exploitation under the Children and Young Person's Act, which carries a maximum imprisonment of 2 years, and the offence of carnal connection under the Women's Charter, which carries a maximum imprisonment of 5 years.
- iii) Imprisonment for a term which may extend to 7 years or fine or both, for the new offence of prostitution of a minor under 18 years of age. The penalties for this offence are set lower than that of sexual penetration of a person under 16 but higher than that of carnal connection in the Women's Charter to reflect the relative severity between these 3 offences.
- iv) Imprisonment for a term which may extend to 10 years or fine or both, for the new offence of organising or promoting sex tours. Compared to the previous offence of an individual client hiring a prostitute under 18, this offence attracts a higher penalty because of the wider exploitation involved and the effect on minors overseas.

- v) Penalties for new offence of procurement of sexual activities with a person with mental disability:
  - a) For non-penetrative acts, imprisonment for a term which may extend to 5 years or fine or both. This is because the penalties for having induced, deceived or threatened a mentally deficient person into non-penetrative sexual activities should be higher than outraging of modesty, as well as sexual exploitation in the Children and Young Person's Act (both of which carry a maximum imprisonment term of up to 2 years.). The penalties, however, should be less than the new offence of sexual penetration of a minor under 16 (which we are proposing to impose a maximum imprisonment term of up to 10 years).
  - b) For penetrative acts, imprisonment for a term which may extend to 10 years or fine or both. This is to achieve parity with the new offence of sexual penetration of a minor under 16 which would carry a maximum imprisonment term of 10 years.
- vi) New offence of necrophilia:
  - a) Imprisonment for a term which may extend to 5 years or fine or both;
  - b) Imprisonment for a term which may extend to 20 years and shall be liable to fine or caning if a person forces another person to commit necrophilia.

## References

35. Please refer to the Draft (Amendment) Bill online at:

- [www.reach.gov.sg](http://www.reach.gov.sg)

## Feedback

36. The public is invited to send their feedback to us online at:

- [www.reach.gov.sg](http://www.reach.gov.sg)

Ministry of Home Affairs  
8 November 2006